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**DEPARTMENT OF JUSTICE**
**Antitrust Division**

***United States v. Danfoss A/S, et al.***
**Proposed Final Judgment and Competitive Impact Statement**

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America v. Danfoss A/S and Eaton Corporation plc*, Civil Action No. 1:21-cv-1880-CJN. On July 14, 2021, the United States filed a Complaint alleging that Danfoss's proposed acquisition of Eaton Corporation plc's hydraulics business would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The proposed Final Judgment, filed at the same time as the Complaint, requires Danfoss to divest three Danfoss hydraulic orbital motor and hydraulic steering unit manufacturing facilities and from Eaton two orbital motor production lines and one hydraulic steering unit production line.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at http://www.justice.gov/atr and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the *Federal Register*. Comments should be submitted in English and directed to Jay Owen, Acting Chief, Defense, Industrials, and Aerospace Section,

Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 8700, Washington, DC 20530 (email address: jay.owen@usdoj.gov).

Suzanne Morris,
Chief, Premerger and
Division Statistics,
Antitrust Division.

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

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|---|---|
| UNITED STATES OF AMERICA,<br>U.S. Department of Justice<br>Antitrust Division<br>450 Fifth Street, N.W., Suite 8700<br>Washington, DC 20530,<br><br>Plaintiff,<br><br>v.<br><br>EATON CORPORATION plc<br>Eaton House, 30 Pembroke Road,<br>Dublin 4<br>Ireland<br><br>and<br><br>DANFOSS A/S,<br>Nordborgvej 81<br>DK-6430v Nordborg<br>Denmark<br><br>Defendants. | Civil Action No.: 1:21-cv-1880-CJN |

**COMPLAINT**

The United States of America ("United States"), acting under the direction of the Attorney General of the United States, brings this civil antitrust action against Defendants Eaton Corporation plc ("Eaton") and Danfoss A/S ("Danfoss") to enjoin Danfoss's proposed acquisition of Eaton's hydraulics business. The United States complains and alleges as follows:

## I. NATURE OF THE ACTION

1. Pursuant to a Transaction Agreement dated January 21, 2020, Danfoss intends to acquire Eaton's hydraulics business for approximately $3.3 billion. The hydraulic power components that Danfoss and Eaton manufacture make it possible to steer, propel, and operate equipment used to pave roads, harvest produce, construct

buildings, and perform other heavy industrial and agricultural tasks across the United States every day.

2. Danfoss and Eaton are two of only three suppliers of hydraulic orbital motors ("orbital motors") and hydraulic steering units ("steering units") used in tractors, wheel loaders, lifts, and other types of mobile off-road equipment in the United States. Orbital motors, also called "low-speed, high-torque" motors, are a low-cost way to move heavy loads in a slow, and thus controlled, way. Steering units direct hydraulic fluid in response to commands from equipment operators and are necessary for any hydraulic steering system to function. Three of every four orbital motors and four of every five steering units purchased in the United States are supplied by either Danfoss or Eaton.

3. Competition between Danfoss and Eaton has driven prices down and spurred the production of new and better orbital motors and steering units. The proposed merger would eliminate this competition, leading to higher prices, lower quality, and diminished innovation.

4. As a result, the proposed acquisition would substantially lessen competition in the market for the design, manufacture, and sale of orbital motors and steering units for mobile off-road equipment in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

## II. DEFENDANTS AND THE TRANSACTION

5. Danfoss is a global corporation headquartered in Nordborg, Denmark that specializes in the manufacturing of components and engineering technologies for, *inter alia*, hydraulics for off-road machinery. Danfoss's Power Solutions division produces hydraulic pumps, motors, valves and steering solutions, as well as electronic components, software, motors, and converters. The Power Solutions division accounted for 35% of Danfoss's €6.3 billion in revenue in 2019.

6. Eaton is a global corporation headquartered in Dublin, Ireland that focuses on power management solutions for electrical, hydraulics, aerospace, and vehicle applications. Eaton Hydraulics, based in Eden Prairie, Minnesota, consists of a Fluid Conveyance Division that sells hoses and other fluid conveyance products and a Power & Motion Controls Division offering hydraulic motors, power units, valves, and steering units. The Power & Motion Controls division had sales of $2.2 billion in 2019.

7. On January 21, 2020, Danfoss and Eaton signed an agreement under which Danfoss will acquire Eaton's hydraulics business in exchange for $3.3 billion.

## III. JURISDICTION AND VENUE

8. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. § 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

9. Defendants design, manufacture, and sell orbital motors and steering units for mobile off-road equipment throughout the United States, and their activities in these areas substantially affect interstate commerce. This Court therefore has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

10. Defendants have consented to venue and personal jurisdiction in this judicial district. Venue is therefore proper in this district under Section 12 of the Clayton Act, 15 U.S.C. § 22, and under 28 U.S.C. § 1391(b) and (c).

## IV. INDUSTRY BACKGROUND

### A. Hydraulic Systems

11. Most heavy industrial and agricultural operations rely on specialized equipment to perform work "off-road" (*e.g.*, in a construction site, a field, a forest, a mine, or on a golf course). The predominant drive technology for this equipment is a hydraulic system, which uses hydraulic fluid to generate power.

12. The basic architecture of a hydraulic system includes a reservoir for hydraulic fluid; a pump to move that fluid; valves to control the liquid in various ways (*e.g.*, pressure, flow, or direction); a motor to convert hydraulic pressure into mechanical energy; and components that accomplish the intended task, such as cylinders.

13. Mobile off-road equipment often has multiple hydraulic systems. Each system serves one of three functions: to carry out the steering commands given by a driver, to propel equipment forward, or to make the equipment perform its intended work function (*e.g.*, to operate the forks on a forklift or raise a scissor lift's platform).

14. Original Equipment Manufacturers ("OEMs") of mobile off-road equipment select components of hydraulic systems individually, considering the performance requirements of the equipment at issue, price, and the space available to house the components selected. To determine components for a new platform, OEMs may solicit bids, seek the services of a distributor, collaborate with a preferred provider, or use in-house engineers as experts.

**B. Orbital Motors**

15. While all hydraulic motors turn hydraulic pressure into mechanical energy, there are different designs that can be used for mobile equipment: gear motors, orbital motors, vane motors, and piston motors. Each design presents a different value proposition in terms of power, pressure, fluid displacement, torque, and rotational speed. OEMs consider each of these performance characteristics, as well as price and physical size, when selecting a motor to be used in a particular hydraulic system.

16. There is a direct relationship between a motor's power metrics and its price. In addition to being more expensive, a motor that is more powerful than necessary for the job has less operating efficiency. Thus, OEMs prefer products that meet, but do not exceed, their desired performance specifications. Once selected, it is difficult and

expensive for an OEM to switch motor designs because of the need to retrofit the equipment to the new motor.

17. Orbital motors have a rotating gear design consisting of an external gear ring and an inner gear star. When the internal gear star rotates in a planetary-type movement, fluid that has been inserted by a pump is displaced between every gear tooth. The result is a high torque output at a low rotational speed. For this reason, orbital motors are also referred to as "low- speed, high torque" motors.

18. Orbital motors are in the "low-to-medium" power category of motors, generating fewer than 100 kilowatts of power. However, an orbital motor is efficient and generates high output levels of torque at low rotational speeds, which makes it easier to control the movement of heavy loads. Orbital motors are also uniquely attractive to OEMs because they come in a standard compact size, which OEMs can count on when designing mobile off-road equipment.

19. Because orbital motors are more commoditized and thus less expensive than other motors that produce similar amounts of torque, they are considered a "workhorse" motor for many OEMs that design mobile off-road equipment, and can be used for the "work" or "propel" functions for a long list of mobile off-road equipment, including potato harvesters, wheel loaders, skid steer loaders, aerial lifts, asphalt pavers, rollers, salt spreaders, harvesters, and street sweepers.

20. In contrast to orbital motors, piston motors are higher powered, higher priced, larger, and often inefficient for an application that is appropriate for an orbital motor. Similarly, gear and vane motors fail to meet an orbital motor's performance metrics for torque.

**C. Hydraulic Steering Units**

21. An OEM designing a power steering system for mobile off-road equipment can choose from three different steering technologies: hydraulic,

electrohydraulic, and electric. Hydraulic steering systems—by far the most common technology used in off-road equipment—use commands from a driver to turn a vehicle's wheels using hydraulic fluid. Electrohydraulic steering systems build on hydraulic steering systems by adding electronically-controlled components that make steering with a joystick or GPS-guided steering function possible. Electric steering does not require hydraulics components and instead generates the power assist needed for steering through electric motors.

22. Hydraulic steering systems move pressurized hydraulic fluid through a circuit to control cylinders connected to the wheels of mobile off-road equipment. The piece of a hydraulic steering system that determines the direction that the fluid moves and provides pressure control is called a steering unit.

23. All hydraulic steering systems—even those with some electronic components—require a steering unit. If an OEM wished to design around a steering unit for mobile off-road equipment, it would have to shift the entirety of the steering system from hydraulic technology to the more expensive electric technology.

## V. THE RELEVANT MARKETS THREATENED BY THE ACQUISITION

### A. Relevant Product Markets

24. An OEM in need of an orbital motor's performance characteristics for a mobile off-road vehicle design would not simply substitute an alternative motor technology. No other motor offers the same combination of (1) efficiency (*i.e.*, operating power necessary for the intended use), (2) torque output, and (3) low price. Vane and gear motors do not meet the torque output performance metrics of an orbital motor, and piston and electric motors are more expensive and less efficient than an orbital motor. In order for a customer to switch to any of these alternative technologies, that customer

would need to downgrade its performance expectations, engage in a costly redesign, or spend significantly more money.

25. Because of these factors, in the event of a small but significant increase in price by a hypothetical monopolist of orbital motors, substitution away from orbital motors would be insufficient to render the price increase unprofitable. Orbital motors for mobile off-road equipment are therefore a line of commerce, or relevant product market, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act, 15 U.S.C. § 18.

26. Similarly, an increase in the price of hydraulic steering systems would not cause OEM customers to replace a hydraulic steering system in mobile off-road equipment with electric steering technology. Electric steering technology—the only alternative steering system that does not require a hydraulic steering unit—is largely unproven and more expensive than hydraulic steering technology. Electric steering, for example, is vulnerable in wet terrains and often lacks the power necessary to move cylinders connected to the wheels of large off-road equipment. Finally, the switching costs from hydraulic steering to electric steering are high and would require a costly redesign by OEMs.

27. Because of these factors, in the event of a small but significant increase in price by a hypothetical monopolist of steering units, substitution away from steering units would be insufficient to render the price increase unprofitable. Steering units for mobile off-road equipment are therefore a line of commerce, or relevant product market, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act, 15 U.S.C. § 18.

### B. Geographic Markets

28. OEMs located in the United States cannot reasonably turn to suppliers without a U.S. presence for the supply of orbital motors or steering units for mobile off-

road equipment. Long lead times due to international shipping and unexpected delays in the delivery of products can cause significant business disruption. Customers similarly require that suppliers warehouse new and replacement parts to avoid costly delays or interruptions to business operations and expect local service and support from suppliers.

29. A hypothetical monopolist of orbital motors or steering units sold in the United States could profitably impose a small but significant non-transitory increase in price for orbital motors or steering units without losing sufficient sales to render the price increase unprofitable. Nor would the price increase be defeated by arbitrage, *e.g.*, by OEMs purchasing through subsidiaries located outside the United States. Accordingly, the relevant geographic market for the purposes of analyzing the effects of the acquisition on orbital motors and steering units for mobile off-road equipment under Section 7 of the Clayton Act, 15 U.S.C. § 18, is the United States.

## VI. DANFOSS'S PROPOSED ACQUISITION OF EATON'S HYDRAULICS BUSINESS IS LIKELY TO RESULT IN ANTICOMPETITIVE EFFECTS

30. The proposed transaction would lessen competition and harm customers for orbital motors and steering units for mobile off-road equipment in the United States by eliminating the substantial head-to-head competition that currently exists between Danfoss and Eaton. Customers would pay higher prices and receive lower quality and service for orbital motors and steering units as a result of the acquisition.

31. In the United States, Danfoss and Eaton are the two largest suppliers of orbital motors for mobile off-road equipment, with market shares of approximately 53% and 24%, respectively. The only other major supplier of orbital motors for mobile off-road equipment has a 9% share of the market. Together, Danfoss and Eaton would account for over 75% of sales of orbital motors in United States.

32. In the United States, Danfoss and Eaton are the two largest suppliers of steering units for mobile off-road equipment, with market shares of approximately 43%

and 41%, respectively. The only other major supplier of steering units for mobile off-road equipment has a considerably smaller market share of less than 1%. Together, Danfoss and Eaton would account for approximately 84% of sales of steering units in United States.

33. As articulated in the Horizontal Merger Guidelines issued by the Department of Justice and the Federal Trade Commission (the "Horizontal Merger Guidelines"[1]), the Herfindahl-Hirschman Index (or "HHI," as described in Appendix A) is a widely used measure of market concentration. Market concentration is often a useful way of measuring the likely anticompetitive effects of an acquisition. The more concentrated a market, the higher the likelihood that a transaction will result in a meaningful reduction in competition and harm customers. Markets in which the HHI exceeds 2,500 points are considered highly concentrated, and transactions that result in highly concentrated markets and increase the HHI by more than 200 points are presumed to be likely to enhance market power.

34. In the market for orbital motors for mobile off-road equipment, the pre-merger HHI is 3,605 and the post-merger HHI is 6,087, representing an increase in the HHI of 2,482. In the market for steering units for mobile off-road equipment, the pre-merger HHI is 4,155 and the post-merger HHI is 8,273, representing an increase in the HHI of 4,118. Under the Horizontal Merger Guidelines, the proposed acquisition will result in highly concentrated markets for both orbital motors and steering units for mobile off-road equipment and is thus presumed likely to enhance market power.

35. The HHI indicators of highly concentrated markets and enhanced market power are consistent with historical head-to-head competition between Danfoss and Eaton to supply orbital motors and steering units for mobile off-road equipment. Danfoss

[1] U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines, *available at* https://www.justice.gov/atr/file/810276/download (Aug. 19, 2010).

and Eaton compete directly on price, quality, product innovation, delivery, and technical service, and the competition between them has benefited U.S. customers of orbital motors and steering units for mobile off-road equipment. Danfoss and Eaton have a reputation for high-quality orbital motors and steering units, product developments that benefit OEMs, an extensive network of distributors throughout the United States, and localized customer support and service. As a result, Danfoss and Eaton are considered to be the two primary—and sometimes the only two—suppliers of orbital motors and steering units to customers in the United States.

36. For all of these reasons, the proposed transaction between Danfoss and Eaton likely would substantially lessen competition in the design, manufacture, and sale of orbital motors and steering units for mobile off-road equipment sold to customers in the United States and lead to higher prices, decreased quality of delivery and service, and diminished innovation.

## VII. ABSENCE OF COUNTERVAILING FACTORS

37. Entry into the design, manufacture, and sale of orbital motors and steering units for mobile off-road equipment sold in United States is unlikely to be timely, likely, or sufficient to prevent the harm to competition caused by Danfoss's acquisition of Eaton's hydraulics business. A new entrant must have the technical capabilities necessary to design, manufacture, and sell orbital motors and steering units that meet customer requirements for quality, performance, and reliability. Additionally, a new entrant must have the requisite scale, an established reputation, and an extensive network of distributors to supply to all customers throughout the United States.

38. As a result of these entry barriers, entry into the market for the design, manufacture, and sale of orbital motors and steering units for mobile off-road equipment sold to customers in United States would not be timely, likely, or sufficient to defeat the

substantial lessening of competition that likely would result from Danfoss's acquisition of Eaton's hydraulics business.

## VIII. VIOLATIONS ALLEGED

39. Danfoss's proposed acquisition of Eaton's hydraulics business likely would substantially lessen competition in the design, manufacture, and sale of orbital motors and steering units for mobile off-road equipment in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

40. Unless enjoined, the proposed acquisition would likely have the following anticompetitive effects, among others, related to the relevant market:

1. a substantial lessening of competition generally;
2. an elimination of actual and potential head-to-head competition between Danfoss and Eaton; and
3. a likely increase in prices and decrease in quality and innovation.

## IX. REQUEST FOR RELIEF

41. The United States requests that this Court:

1. adjudge and decree that Danfoss's acquisition of Eaton's hydraulics business would be unlawful and violate Section 7 of the Clayton Act, 15 U.S.C. § 18;
2. preliminarily and permanently enjoin and restrain Defendants and all persons acting on their behalf from consummating the proposed acquisition of Eaton's hydraulics business by Danfoss, or from entering into or carrying out any other contract, agreement, plan, or understanding which would combine Eaton's hydraulics business with Danfoss;
3. award the United States its costs for this action; and

4. award the United States such other and further relief as the Court deems just and proper.

Dated: July 14, 2021

Respectfully submitted,

COUNSEL FOR PLAINTIFF UNITED STATES:


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Acting Assistant Attorney General
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## APPENDIX A
## DEFINITION OF THE HERFINDAHL-HIRSCHMAN INDEX

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30 percent, 30 percent, 20 percent, and 20 percent, the HHI is 2,600 (302 + 302 + 202 + 202 = 2,600). The HHI takes into account the relative size distribution of the firms in a market and approaches zero when a market consists of a large number of small firms. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases. Markets in which the HHI is above 2,500 are considered to be highly concentrated. *See* Horizontal Merger Guidelines § 5.3. Transactions that increase the HHI by more than 200 points in highly concentrated markets are presumed to be likely to enhance market power under the guidelines issued by the U.S. Department of Justice and Federal Trade Commission. *See id.*

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

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| UNITED STATES OF AMERICA,<br>Plaintiff,<br>v.<br>DANFOSS A/S,<br>and<br>EATON CORPORATION PLC,<br>Defendants. | Case No: 1:21-cv-1880-CJN |

**[PROPOSED] FINAL JUDGMENT**

WHEREAS, Plaintiff, United States of America, filed its Complaint on July 14, 2021,

AND WHEREAS, the United States and Defendants, Danfoss A/S ("Danfoss") and Eaton Corporation plc ("Eaton"), have consented to 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, Defendants agree to make a divestiture to remedy the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants represent that the divestiture and other relief required by this Final Judgment can and will be made and that Defendants 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 Defendants under Section 7 of the Clayton Act (15 U.S.C. § 18).

## II. DEFINITIONS

As used in this Final Judgment:

A. "Danfoss" means Defendant Danfoss A/S, a Danish corporation with its headquarters in Nordborg, Denmark, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. "Eaton" means Defendant Eaton Corporation plc, an Irish corporation with its headquarters in Dublin, Ireland, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Interpump" means Interpump Group S.p.A., an Italian corporation with its headquarters in Sant'llario d'Enza, Reggio Emilia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. "Acquirer" means Interpump Group S.p.A. or another entity approved by the United States in its sole discretion to which Defendants divest the Divestiture Assets.

E. "Danfoss Orbital Motor Business" means Danfoss's global business of designing, manufacturing, and selling its OMP X, OMR X, OMEW, OMH, OMS, OMM, OML, CE, RE, RC, RS, DH, DS, DT, DR, D9, HB, HK, and WS models of orbital motor products.

F. "Danfoss Hydraulic Steering Unit Business" means Danfoss's global business of designing, manufacturing, and selling its OSPM, OSPP, LAGB, LAGU, LAGS, LAGC, LAGL, and LAGZ models of hydraulic steering unit products.

G. "Danfoss Hydraulic Steering Unit IP Licenses" means worldwide, non-exclusive, royalty-free, perpetual, paid-up, irrevocable licenses to the intellectual property listed in Exhibit 1.

H. "Eaton Orbital Motor Assets" means all of Eaton's assets used to manufacture its HP 30, VIS 30, VIS 40, and VIS 45 models of orbital motor products.

I. "Eaton Hydraulic Steering Unit Assets" means all of Eaton's assets used to manufacture its Series 10 and Series 20 models of hydraulic steering unit products.

J. "Eaton Orbital Motor IP Licenses" means worldwide, non-exclusive, royalty-free, perpetual, paid-up, irrevocable licenses to the intellectual property listed in Exhibit 2.

K. "Eaton Hydraulic Steering Unit IP Licenses" means worldwide, non-exclusive, royalty-free, perpetual, paid-up, irrevocable licenses to the intellectual property listed in Exhibit 3.

L. "Char Lynn IP License" means a non-exclusive, irrevocable, fully paid-up, royalty-free, perpetual license to use the "Char Lynn" trademark to market models HP 30, VIS 30, VIS 40, and VIS 45, or their equivalents, of orbital motors.

M. "Divestiture Assets" means the Danfoss Divestiture Assets and the Eaton Divestiture Assets.

N. "Divestiture Date" means the date on which the Divestiture Assets are divested to the Acquirer pursuant to this Final Judgment.

O. "Danfoss Divestiture Assets" means (i) all assets, located in Zhenjiang, China as of January 21, 2020, including lapping machines, grinders, testers, measurement devices, and any other assets that the United States, in its sole discretion, deems to be

necessary for the manufacture of Danfoss's S70 model hydraulic steering unit product and (ii) all of Defendants' rights, titles, and interests in and to the Danfoss Orbital Motor Business, the Danfoss Hydraulic Steering Unit Business, and all other property and assets, tangible and intangible, wherever located, relating to or used in connection with the Danfoss Orbital Motor Business or Danfoss Hydraulic Steering Unit Business, including:

1. the facility located at 110 Bill Bryan Blvd, Hopkinsville, KY 42240 (the "Hopkinsville Facility");

2. the facility located at ul. Logistyezna 1, 55-040 Kobierzyce, Wroclaw (Poland) (the "Wroclaw Facility");

3. the facility located at Ludwigsluster Chaussee 5, 19370, Parchim (Germany) (the "Parchim Facility");

4. all other real property, including fee simple interests, real property leasehold interests and renewal rights thereto, improvements to real property, and options to purchase any adjoining or other property, together with all buildings, facilities, and other structures;

6. all tangible personal property, including fixed assets, machinery and manufacturing equipment, tools, vehicles, inventory, materials, office equipment and furniture, computer hardware, and supplies;

7. all contracts, contractual rights, and customer relationships, and all other agreements, commitments, and understandings, including supply agreements, teaming agreements, and leases, and all outstanding offers or solicitations to enter into a similar arrangement;

8. all licenses, permits, certifications, approvals, consents, registrations, waivers, and authorizations issued or granted by any governmental organization, and all pending applications or renewals;

9. all records and data, including (a) customer lists, accounts, sales, and credits records, (b) production, repair, maintenance, and performance records, (c) manuals and technical information Defendants provide to their own employees, customers, suppliers, agents, or licensees, (d) records and research data concerning historic and current research and development activities, including designs of experiments and the results of successful and unsuccessful designs and experiments, and (e) drawings, blueprints, and designs;

10. the Danfoss Hydraulic Steering Unit IP Licenses;

11. all intellectual property owned, licensed, or sublicensed, either as licensor or licensee, including (a) patents, patent applications, and inventions and discoveries that may be patentable, (b) registered and unregistered copyrights and copyright applications, and (c) registered and unregistered trademarks, trade dress, service marks, trade names, and trademark applications; and

12. all other intangible property, including (a) commercial names and d/b/a names, (b) technical information, (c) computer software and related documentation, know-how, trade secrets, design protocols, specifications for materials, specifications for parts, specifications for devices, safety procedures (*e.g.*, for the handling of materials and substances), quality assurance and control procedures, and design tools, and (d) rights in internet web sites and internet domain names.

*Provided, however*, that the Danfoss Divestiture Assets do not include (i) rights, titles, or interests in real property or tangible personal property located in Zhenjiang, China that is used to manufacture CE, RE, RC, and WS model orbital motor products that, at the Divestiture Date, are sold exclusively to customers outside of the United States; (ii) rights, titles, or interests in real property or tangible personal property located in Nordborg, Denmark that is used to manufacture OMEWF model orbital motor

products that, at the Divestiture Date, are sold exclusively to customers outside of the United States; or (iii) intellectual property listed in Exhibit 1.

P. "Eaton Divestiture Assets" means all of Defendants' rights, titles, and interests in and to the Eaton Orbital Motor Assets, the Eaton Hydraulic Steering Unit Assets, and all other property and assets, tangible and intangible, wherever located, relating to or used in connection with the Eaton Orbital Motor Assets or the Eaton Hydraulic Steering Unit Assets, including:

1. the Char Lynn IP License;

2. the Eaton Orbital Motor IP Licenses;

3. the Eaton Hydraulic Steering Unit IP Licenses;

4. the Eaton Divested Equipment and all other tangible personal property, including fixed assets, machinery and manufacturing equipment, tools, vehicles, inventory, materials, office equipment and furniture, computer hardware, and supplies;

5. all contracts, contractual rights, and customer relationships, and all other agreements, commitments, and understandings, including supply agreements, teaming agreements, and leases, and all outstanding offers or solicitations to enter into a similar arrangement;

6. all licenses, permits, certifications, approvals, consents, registrations, waivers, and authorizations issued or granted by any governmental organization, and all pending applications or renewals;

7. all records and data, including (a) customer lists, accounts, sales, and credits records, (b) production, repair, maintenance, and performance records, (c) manuals and technical information Defendants provide to their own employees, customers, suppliers, agents, or licensees, (d) records and research data concerning historic and current research and development activities, including designs of

experiments and the results of successful and unsuccessful designs and experiments, and (e) drawings, blueprints, and designs;

8. all intellectual property owned, licensed, or sublicensed, either as licensor or licensee, including (a) patents, patent applications, and inventions and discoveries that may be patentable, (b) registered and unregistered copyrights and copyright applications, and (c) registered and unregistered trademarks, trade dress, service marks, trade names, and trademark applications; and

9. all other intangible property, including (a) commercial names and d/b/a names, (b) technical information, (c) computer software and related documentation, know-how, trade secrets, design protocols, specifications for materials, specifications for parts, specifications for devices, safety procedures (*e.g.*, for the handling of materials and substances), quality assurance and control procedures, and design tools, and (d) rights in internet web sites and internet domain names.

*Provided, however*, that the Eaton Divestiture Assets do not include: (i) real property, (ii) tangible property, including fixed assets, machinery, and manufacturing equipment, used to manufacture Eaton's Series 20 model of hydraulic steering unit products; (iii) the Char Lynn trademark; (iv) intellectual property listed in Exhibit 2; (v) intellectual property listed in Exhibit 3; (vi) paint line assets used for the Eaton Orbital Motor Assets or Eaton Hydraulic Steering Unit Assets; or (vii) at the option of Acquirer, heat treat ovens, phosphate lines, or 80 ton broach used for the Eaton Orbital Motor Assets; or the HMS line used for the Eaton Hydraulic Steering Unit Assets.

Q. "Eaton Divested Equipment" means machining, assembly, and test assets relating to or used in connection with the production lines used for the Eaton Orbital Motor Assets or Eaton Hydraulic Steering Unit Assets. *Provided, however*, that the Eaton Divested Equipment does not include paint line assets used for the Eaton Orbital Motor Assets or Eaton Hydraulic Steering Unit Assets.

R. "Including" means including, but not limited to.

S. "Relevant Personnel" means all full-time, part-time, or contract employees of Danfoss wherever located, that the United States, in its sole discretion, deems to be primarily involved in the design, manufacture, or sale of Danfoss's OMP X, OMR X, OMEW, OMH, OMS, OMM, OML, CE, RE, RC, RS, DH, DS, DT, DR, D9, HB, HK, and WS models of orbital motor products and Danfoss's S70, OSPM, OSPP, LAGB, LAGU, LAGS, LAGC, LAGL, and LAGZ models of hydraulic steering unit products, at any time between January 21, 2020, and the Divestiture Date.

*Provided, however*, Relevant Personnel does not include employees of Danfoss that the United States, in its sole discretion, deems to be primarily engaged in human resources, legal, or other general or administrative support functions. The United States, in its sole discretion, will resolve any disagreement relating to which employees are Relevant Personnel.

T. "Regulatory Approvals" means any approvals or clearances pursuant to filings under antitrust, competition, or other U.S. or international laws that are required for Acquirer's acquisition of the Divestiture Assets to proceed.

U. "Transaction" means the proposed acquisition by Danfoss of certain assets and equity interests from Eaton, pursuant to the Stock and Asset Purchase Agreement between Eaton Corporation PLC as the Seller and Danfoss A/S as the Buyer, dated January 21, 2020.

## III. APPLICABILITY

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

B. If, prior to complying with Section IV and Section V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or

of business units that include the Divestiture Assets, Defendants must require any purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from Acquirer.

## IV. DIVESTITURES

A. Defendant Danfoss is ordered and directed, within sixty (60) calendar days after the Court's entry of the Asset Preservation Stipulation and Order in this matter, to divest the Divestiture Assets in a manner consistent with this Final Judgment to Interpump or another Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total and will notify the Court of any extensions.

B. If Defendant Danfoss has not received all Regulatory Approvals within sixty (60) calendar days after the Court's entry of the Asset Preservation Stipulation and Order in this matter, and Acquirer or Defendant Danfoss has initiated contact with any governmental entity to seek any Regulatory Approval within five (5) calendar days after the Court's entry of the Asset Preservation Stipulation and Order in this matter, the time period provided in Paragraph IV.A will be extended until ten (10) calendar days after that Regulatory Approval is received. This extension allowed for securing Regulatory Approvals may be no longer than thirty (30) calendar days past the time period provided in Paragraph IV.A, unless the United States, in its sole discretion, consents to an additional extension.

C. Defendants must use best efforts to divest the Divestiture Assets as expeditiously as possible. Defendants must take no action that would jeopardize the completion of the divestiture ordered by the Court, including any action to impede the permitting, operation, or divestiture of the Divestiture Assets.

D. Unless the United States otherwise consents in writing, divestiture pursuant to this Final Judgment must include the entire Divestiture Assets and must be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by Acquirer as part of a viable, ongoing business of designing, manufacturing, and selling orbital motors and hydraulic steering units for mobile off-road equipment and that the divestiture to Acquirer will remedy the competitive harm alleged in the Complaint.

E. The divestiture must be made to an Acquirer that, in the United States' sole judgment, has the intent and capability, including the necessary managerial, operational, technical, and financial capability, to compete effectively in the design, manufacture and sale of orbital motors and hydraulic steering units for mobile off-road equipment.

F. The divestiture must be accomplished in a manner that satisfies the United States, in its sole discretion, that none of the terms of any agreement between Acquirer and Defendant Danfoss gives Defendants the ability unreasonably to raise Acquirer's costs, to lower Acquirer's efficiency, or otherwise interfere in the ability of Acquirer to compete effectively in the design, manufacture, and sale of orbital motors and hydraulic steering units for mobile off-road equipment.

G. In the event Defendant Danfoss is attempting to divest the Divestiture Assets to an Acquirer other than Interpump, Defendant Danfoss promptly must make known, by usual and customary means, the availability of the Divestiture Assets. Defendant Danfoss must inform any person making an inquiry relating to a possible purchase of the Divestiture Assets that the Divestiture Assets are being divested in accordance with this Final Judgment and must provide that person with a copy of this Final Judgment. Defendants must offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the

Divestiture Assets that are customarily provided in a due diligence process; *provided, however,* that Defendants need not provide information or documents subject to the attorney-client privilege or work-product doctrine. Defendants must make all information and documents available to the United States at the same time that the information and documents are made available to any other person.

H. Defendants must provide prospective Acquirers with (1) access to make inspections of the Divestiture Assets; (2) access to all environmental, zoning, and other permitting documents and information relating to the Divestiture Assets; and (3) access to all financial, operational, or other documents and information relating to the Divestiture Assets that would customarily be provided as part of a due diligence process. Defendants also must disclose all encumbrances on any part of the Divestiture Assets, including on intangible property.

I. Defendants must cooperate with and assist Acquirer in identifying and, at the option of Acquirer, in hiring all Relevant Personnel, including:

1. Within ten (10) business days following the filing of the Complaint in this matter, Defendant Danfoss must identify all Relevant Personnel to Acquirer and the United States, including by providing organization charts covering all Relevant Personnel.

2. Within ten (10) business days following receipt of a request by Acquirer, the United States, or the monitoring trustee, Defendant Danfoss must provide to Acquirer, the United States, and the monitoring trustee additional information relating to Relevant Personnel, including name, job title, reporting relationships, past experience, responsibilities, training and educational histories, relevant certifications, and job performance evaluations. Defendant Danfoss must also provide to Acquirer, the United States, and the monitoring trustee information relating to the current and accrued compensation and benefits of Relevant Personnel, including most recent bonuses paid,

aggregate annual compensation, current target or guaranteed bonus, if any, any retention agreement or incentives, and any other payments due, compensation or benefit accrued, or promises made to the Relevant Personnel. If Defendant Danfoss is barred by any applicable law from providing any of this information, Defendant Danfoss must provide, within ten (10) business days following receipt of the request, the requested information to the full extent permitted by law and also must provide a written explanation of Defendant Danfoss's inability to provide the remaining information, including specifically identifying the provisions of the applicable laws.

3. At the request of Acquirer, Defendants must promptly make Relevant Personnel available for private interviews with Acquirer during normal business hours at a mutually agreeable location.

4. Defendants must not interfere with any effort by Acquirer to employ any Relevant Personnel. Interference includes offering to increase the compensation or improve the benefits of Relevant Personnel unless (a) the offer is part of a company-wide increase in compensation or improvement in benefits that was announced prior to January 21, 2020 or (b) the offer is approved by the United States in its sole discretion. Defendants' obligations under this Paragraph will expire six (6) months after the Divestiture Date.

5. For Relevant Personnel who elect employment with Acquirer within one hundred-eighty (180) calendar days of the Divestiture Date, Defendant Danfoss must waive all non-compete and non-disclosure agreements; vest and pay to the Relevant Personnel (or to Acquirer for payment to the employee) on a prorated basis any bonuses, incentives, other salary, benefits or other compensation fully or partially accrued at the time of the transfer of the employee to Acquirer; vest any unvested pension and other equity rights; and provide all other benefits that those Relevant Personnel otherwise would have been provided had the Relevant Personnel continued employment with

Defendants, including any retention bonuses or payments. Defendants may maintain reasonable restrictions on disclosure by Relevant Personnel of Defendants' proprietary non-public information that is unrelated to the design, manufacture, and sale of orbital motors and hydraulic steering units and not otherwise required to be disclosed by this Final Judgment.

J. Defendant Danfoss must warrant to Acquirer that (1) the Divestiture Assets will be operational and without material defect on the date of their transfer to Acquirer; (2) there are no material defects in the environmental, zoning, or other permits relating to the operation of the Divestiture Assets; and (3) Defendant Danfoss has disclosed all encumbrances on any part of the Divestiture Assets, including on intangible property. Following the sale of the Divestiture Assets, Defendants must not undertake, directly or indirectly, challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

K. Defendants must assign, subcontract, or otherwise transfer all contracts, agreements, and customer relationships (or portions of such contracts, agreements, and customer relationships) included in the Divestiture Assets, including all supply and sales contracts, to Acquirer; *provided, however,* that for any contract or agreement that requires the consent of another party to assign, subcontract, or otherwise transfer, Defendants must use best efforts to accomplish the assignment, subcontracting, or transfer. Defendants must not interfere with any negotiations between Acquirer and a contracting party.

L. Defendants must use best efforts to assist Acquirer to obtain all necessary licenses, registrations, and permits to operate the Divestiture Assets. Until Acquirer obtains the necessary licenses, registrations, and permits, Defendants must provide Acquirer with the benefit of Defendants' licenses, registrations, and permits to the full extent permissible by law.

M. Within twelve (12) months after the Court's entry of the Asset Preservation Stipulation and Order in this matter, Defendants must relocate the Eaton Divested Equipment to one or more locations as specified by Acquirer. In order to fulfill this obligation, the Eaton Divested Equipment must be fully operational at the new location(s). The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed six (6) months in total.

N. At the option of Acquirer, and subject to approval by the United States in its sole discretion, on or before the Divestiture Date, Defendant Danfoss must enter into a supply contract or contracts for heat treatment services for the Danfoss Divestiture Assets located in Wroclaw, Poland; gerotors for Eaton's S10 model of hydraulic steering units; spools, sleeves, and gear sets for Danfoss's OSPP model of hydraulic steering units; shafts for Danfoss's OMS model of orbital motors; and the components for Eaton's HP30 2-speed model 22 orbital motor product listed in Exhibit 4, sufficient to meet Acquirer's needs, as determined by Acquirer, for a period of up to twelve (12) months, on terms and conditions reasonably related to market conditions for the supply of heat treatment services, gerotors, spools, sleeves, gear sets, shafts, and the components listed in Exhibit 4. Any amendment to or modification of any provision of any such supply contract is subject to approval by the United States, in its sole discretion. The United States, in its sole discretion, may approve one or more extensions of any supply contract for a total of up to an additional six (6) months. If Acquirer seeks an extension of the term of any supply contract, Defendants must notify the United States in writing at least sixty (60) days prior to the date the supply contract expires. Acquirer may terminate a supply contract, or any portion of a supply contract, without cost or penalty at any time upon commercially reasonable notice.

O. At the option of Acquirer, and subject to approval by the United States in its sole discretion, on or before the Divestiture Date, Defendants must enter into a supply

contract for HP 30, VIS 30, VIS 40, and VIS 45 models of orbital motor products and S10 and S20 models of hydraulic steering unit products sufficient to meet Acquirer's needs, as determined by Acquirer, for a period of up to eighteen (18) months, on terms and conditions reasonably related to market conditions for the supply of HP/VIS orbital motors and S10 and S20 Hydraulic Steering Units. Any amendment to or modification of any provision of any such supply contract is subject to approval by the United States, in its sole discretion. The United States, in its sole discretion, may approve one or more extensions of any supply contract for a total of up to an additional six (6) months. If Acquirer seeks an extension of the term of any supply contract, Defendants must notify the United States in writing at least sixty (60) days prior to the date the supply contract expires. Acquirer may terminate a supply contract, or any portion of a supply contract, without cost or penalty at any time upon commercially reasonable notice.

P. At the option of Acquirer, and subject to approval by the United States in its sole discretion, on or before the Divestiture Date, Defendant Danfoss must enter into a contract to provide transition services for back office, accounting, human resources, information technology services and support, and employee health and safety for the Divestiture Assets, and technical training services and support for the Eaton Divestiture Assets for a period of up to twelve (12) months on terms and conditions reasonably related to market conditions for the provision of the transition services. Any amendment to or modification of any provision of a contract to provide transition services is subject to approval by the United States, in its sole discretion. The United States, in its sole discretion, may approve one or more extensions of any contract for transition services for a total of up to an additional six (6) months. If Acquirer seeks an extension of the term of any contract for transition services, Defendants must notify the United States in writing at least three (3) months prior to the date the contract expires. Acquirer may terminate a contract for transition services, or any portion of a contract for transition services,

without cost or penalty at any time upon commercially reasonable written notice. The employee(s) of Defendants tasked with providing transition services must not share any competitively sensitive information of Acquirer with any other employee of Defendants.

Q. For a period of one (1) year following the Divestiture Date, Defendants must not initiate customer-specific communications to solicit any customer for the portion of that customer's business covered by a contract, agreement, or relationship (or portion thereof) that is included in the Divestiture Assets; *provided, however,* that: (1) Defendants may respond to inquiries initiated by customers and enter into negotiations at the request of such customers (including responding to requests for quotation or proposal) to supply any business, whether or not such business was included in the Divestiture Assets; and (2) Defendants must maintain a log of telephonic, electronic, in-person, and other communications that constitute inquiries or requests from customers within the meaning of this Paragraph and make it available to the United States for inspection upon request. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed six (6) months in total.

R. If any term of an agreement between Defendants and Acquirer, including an agreement to effectuate the divestiture required by this Final Judgment, varies from a term of this Final Judgment, to the extent that Defendants cannot fully comply with both, this Final Judgment determines Defendants' obligations.

## V. APPOINTMENT OF DIVESTITURE TRUSTEE

A. If Defendants have not divested the Divestiture Assets within the period specified in Paragraph IV.A, Defendants must immediately notify the United States of that fact in writing. Upon application of the United States, which Defendants may not oppose, the Court will appoint a divestiture trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a divestiture trustee by the Court, only the

divestiture trustee will have the right to sell the Divestiture Assets. The divestiture trustee will have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States, in its sole discretion, at a price and on terms obtainable through reasonable effort by the divestiture trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and will have other powers as the Court deems appropriate. The divestiture trustee must sell the Divestiture Assets as quickly as possible.

C. Defendants may not object to a sale by the divestiture trustee on any ground other than malfeasance by the divestiture trustee. Objections by Defendants must be conveyed in writing to the United States and the divestiture trustee within ten (10) calendar days after the divestiture trustee has provided the notice of proposed divestiture required by Section VI.

D. The divestiture trustee will serve at the cost and expense of Defendant Danfoss pursuant to a written agreement, on terms and conditions, including confidentiality requirements and conflict of interest certifications, approved by the United States in its sole discretion.

E. The divestiture trustee may hire at the cost and expense of Defendant Danfoss any agents or consultants, including investment bankers, attorneys, and accountants, that are reasonably necessary in the divestiture trustee's judgment to assist with the divestiture trustee's duties. These agents or consultants will be accountable solely to the divestiture trustee and will serve on terms and conditions, including confidentiality requirements and conflict-of-interest certifications, approved by the United States in its sole discretion.

F. The compensation of the divestiture trustee and agents or consultants hired by the divestiture trustee must be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement that provides the divestiture trustee with incentives based

on the price and terms of the divestiture and the speed with which it is accomplished. If the divestiture trustee and Defendant Danfoss are unable to reach agreement on the divestiture trustee's compensation or other terms and conditions of engagement within fourteen (14) calendar days of the appointment of the divestiture trustee by the Court, the United States, in its sole discretion, may take appropriate action, including by making a recommendation to the Court. Within three (3) business days of hiring an agent or consultant, the divestiture trustee must provide written notice of the hiring and rate of compensation to Defendant Danfoss and the United States.

G. The divestiture trustee must account for all monies derived from the sale of the Divestiture Assets sold by the divestiture trustee and all costs and expenses so incurred. Within thirty (30) calendar days of the Divestiture Date, the divestiture trustee must submit that accounting to the Court for approval. After approval by the Court of the divestiture trustee's accounting, including fees for unpaid services and those of agents or consultants hired by the divestiture trustee, all remaining money must be paid to Defendant Danfoss and the trust will then be terminated.

H. Defendants must use best efforts to assist the divestiture trustee to accomplish the required divestiture. Subject to reasonable protection for trade secrets, other confidential research, development, or commercial information, or any applicable privileges, Defendants must provide the divestiture trustee and agents or consultants retained by the divestiture trustee with full and complete access to all personnel, books, records, and facilities of the Divestiture Assets. Defendants also must provide or develop financial and other information relevant to the Divestiture Assets that the divestiture trustee may reasonably request. Defendants must not take any action to interfere with or to impede the divestiture trustee's accomplishment of the divestiture.

I. The divestiture trustee must maintain complete records of all efforts made to sell the Divestiture Assets, including by filing monthly reports with the United States

setting forth the divestiture trustee's efforts to accomplish the divestiture ordered by this Final Judgment. The reports must include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring any interest in the Divestiture Assets and must describe in detail each contact.

J. If the divestiture trustee has not accomplished the divestiture ordered by this Final Judgment within six (6) months of appointment, the divestiture trustee must promptly provide the United States with a report setting forth (1) the divestiture trustee's efforts to accomplish the required divestiture; (2) the reasons, in the divestiture trustee's judgment, why the required divestiture has not been accomplished; and (3) the divestiture trustee's recommendations for completing the divestiture. Following receipt of that report, the United States may make additional recommendations to the Court. The Court thereafter may enter such orders as it deems appropriate to carry out the purpose of this Final Judgment, which may include extending the trust and the term of the divestiture trustee's appointment by a period requested by the United States.

K. The divestiture trustee will serve until divestiture of all Divestiture Assets is completed or for a term otherwise ordered by the Court.

L. If the United States determines that the divestiture trustee is not acting diligently or in a reasonably cost-effective manner, the United States may recommend that the Court appoint a substitute divestiture trustee.

## VI. NOTICE OF PROPOSED DIVESTITURE

A. Within two (2) business days following execution of a definitive agreement with an Acquirer other than Interpump to divest the Divestiture Assets, Defendants or the divestiture trustee, whichever is then responsible for effecting the divestiture, must notify the United States of the proposed divestiture. If the divestiture

trustee is responsible for completing the divestiture, the divestiture trustee also must notify Defendants. The notice must set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets.

B. Within fifteen (15) calendar days of receipt by the United States of the notice required by Paragraph VI.A, the United States may request from Defendants, the proposed Acquirer, other third parties, or the divestiture trustee additional information concerning the proposed divestiture, the proposed Acquirer, and other prospective Acquirers. Defendants and the divestiture trustee must furnish the additional information requested within fifteen (15) calendar days of the receipt of the request, unless the United States provides written agreement to a different period.

C. Within forty-five (45) calendar days after receipt of the notice required by Paragraph VI.A or within twenty (20) calendar days after the United States has been provided the additional information requested pursuant to Paragraph VI.B, whichever is later, the United States will provide written notice to Defendants and any divestiture trustee that states whether the United States, in its sole discretion, objects to the proposed Acquirer or any other aspect of the proposed divestiture. Without written notice that the United States does not object, a divestiture may not be consummated. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Paragraph V.C of this Final Judgment. Upon objection by Defendants pursuant to Paragraph V.C, a divestiture by the divestiture trustee may not be consummated unless approved by the Court.

D. No information or documents obtained pursuant to this Section 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 evaluating a proposed Acquirer or securing compliance with this Final Judgment, or as otherwise required by law.

E. In the event of a request by a third party for disclosure of information under the Freedom of Information Act, 5 U.S.C. § 552, the United States Department of Justice's Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 C.F.R. part 16, including the provision on confidential commercial information, at 28 C.F.R. § 16.7. Persons submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 C.F.R. § 16.7. Designations of confidentiality expire ten (10) years after submission, "unless the submitter requests and provides justification for a longer designation period." *See* 28 C.F.R. § 16.7(b).

F. If at the time that a person furnishes information or documents to the United States pursuant to this Section, that person 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 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 that person ten (10) calendar days' notice before divulging the material in any legal proceeding (other than a grand-jury proceeding).

## VII. FINANCING

Defendants may not finance all or any part of Acquirer's purchase of all or part of the Divestiture Assets.

## VIII. ASSET PRESERVATION

Defendants must take all steps necessary to comply with the Asset Preservation Stipulation and Order entered by the Court.

## IX. AFFIDAVITS

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture required by this Final Judgment has been completed, each Defendant must deliver to the United States an affidavit, signed by each Defendant's Chief Financial Officer and General Counsel, describing in reasonable detail the fact and manner of that Defendant's compliance with this Final Judgment. The United States, in its sole discretion, may approve different signatories for the affidavits. Defendant Eaton's obligations under this Paragraph IX.A shall cease thirty (30) calendar days after the closing of the Transaction.

B. Each affidavit required by Paragraph IX.A must include: (1) the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, an interest in the Divestiture Assets, and describe in detail each contact with such persons during that period; (2) a description of the efforts Defendants have taken to solicit buyers for and complete the sale of the Divestiture Assets and to provide required information to prospective Acquirers; and (3) a description of any limitations placed by Defendants on information provided to prospective Acquirers. Objection by the United States to information provided by Defendants to prospective Acquirers must be made within fourteen (14) calendar days of receipt of the affidavit, except that the United States may object at any time if the information set forth in the affidavit is not true or complete.

C. Defendants must keep all records of any efforts made to divest the Divestiture Assets until one (1) year after the Divestiture Date.

D. Within twenty (20) calendar days of the filing of the Complaint in this matter, each Defendant must deliver to the United States an affidavit signed by that Defendant's Chief Financial Officer and General Counsel that describes in reasonable detail all actions that Defendant has taken and all steps that Defendant has implemented on an ongoing basis to comply with Section VIII of this Final Judgment. The United States, in its sole discretion, may approve different signatories for the affidavits.

E. If a Defendant makes any changes to the actions and steps described in affidavits provided pursuant to Paragraph IX.D, the Defendant must, within fifteen (15) calendar days after any change is implemented, deliver to the United States an affidavit describing those changes.

F. Defendants must keep all records of any efforts made to comply with Section VIII until one (1) year after the Divestiture Date.

## X. APPOINTMENT OF MONITORING TRUSTEE

A. Upon application of the United States, which Defendants may not oppose, the Court will appoint a monitoring trustee selected by the United States and approved by the Court.

B. The monitoring trustee will have the power and authority to monitor Defendants' compliance with the terms of this Final Judgment and the Asset Preservation Stipulation and Order entered by the Court and will have other powers as the Court deems appropriate. The monitoring trustee will have no responsibility or obligation for operation of the Divestiture Assets.

C. Defendants may not object to actions taken by the monitoring trustee in fulfillment of the monitoring trustee's responsibilities under any Order of the Court on any ground other than malfeasance by the monitoring trustee. Objections by Defendants must be conveyed in writing to the United States and the monitoring trustee within ten

(10) calendar days of the monitoring trustee's action that gives rise to Defendants' objection.

D. The monitoring trustee will serve at the cost and expense of Defendant Danfoss pursuant to a written agreement, on terms and conditions, including confidentiality requirements and conflict of interest certifications, approved by the United States in its sole discretion.

E. The monitoring trustee may hire, at the cost and expense of Defendant Danfoss, any agents and consultants, including investment bankers, attorneys, and accountants, that are reasonably necessary in the monitoring trustee's judgment to assist with the monitoring trustee's duties. These agents or consultants will be solely accountable to the monitoring trustee and will serve on terms and conditions, including confidentiality requirements and conflict-of-interest certifications, approved by the United States in its sole discretion.

F. The compensation of the monitoring trustee and agents or consultants retained by the monitoring trustee must be on reasonable and customary terms commensurate with the individuals' experience and responsibilities. If the monitoring trustee and Defendant Danfoss are unable to reach agreement on the monitoring trustee's compensation or other terms and conditions of engagement within fourteen (14) calendar days of the appointment of the monitoring trustee, the United States, in its sole discretion, may take appropriate action, including by making a recommendation to the Court. Within three (3) business days of hiring any agents or consultants, the monitoring trustee must provide written notice of the hiring and the rate of compensation to Defendant Danfoss and the United States.

G. The monitoring trustee must account for all costs and expenses incurred.

H. Defendants must use best efforts to assist the monitoring trustee to monitor Defendants' compliance with their obligations under this Final Judgment and the

Asset Preservation Stipulation and Order. Subject to reasonable protection for trade secrets, other confidential research, development, or commercial information, or any applicable privileges, Defendants must provide the monitoring trustee and any agents or consultants retained by the monitoring trustee with full and complete access to all personnel, books, records, and facilities of the Divestiture Assets. Defendants may not take any action to interfere with or to impede accomplishment of the monitoring trustee's responsibilities.

I. The monitoring trustee must investigate and report on Defendants' compliance with this Final Judgment and the Asset Preservation Stipulation and Order, including compliance with all supply and transition service agreements and progress of production line transfers. The monitoring trustee must provide periodic reports to the United States setting forth Defendants' efforts to comply with their obligations under this Final Judgment and under the Asset Preservation Stipulation and Order. The United States, in its sole discretion, will set the frequency of the monitoring trustee's reports.

J. The monitoring trustee will serve until the divestiture of all the Divestiture Assets is finalized pursuant to either Section IV or Section V of this Final Judgment, Defendants have complied with the terms of the transition services agreements and supply contracts provided for in Paragraphs IV.N, IV.O, and IV.P of this Final Judgment, and Defendants have fulfilled all their obligations under Paragraphs IV.M and IV.Q of this Final Judgment, unless the United States, in its sole discretion, determines a different period is appropriate.

K. If the United States determines that the monitoring trustee is not acting diligently or in a reasonably cost-effective manner, the United States may recommend that the Court appoint a substitute.

## XI. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment or of related orders such as the Asset Preservation 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 Defendants, Defendants 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 Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, Defendants' 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 Defendants.

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

C. No information or documents obtained by the United States pursuant to this Section 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.

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

E. If at the time that Defendants furnish information or documents to the United States pursuant to this Section, Defendants represent and identify 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 Defendants mark 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 Defendants ten (10) calendar days' notice before divulging the material in any legal proceeding (other than a grand jury proceeding).

## XII. FIREWALL

A. For a period of two (2) years following the filing of this Proposed Final Judgment, Defendants must implement and maintain procedures to prevent any employees of Defendants from sharing competitively sensitive information relating to the Divestiture Assets with personnel of Defendants with responsibilities relating to Danfoss's or Eaton's design, manufacture, and sale of hydraulic orbital motors or hydraulic steering units.

B. Defendants, within thirty (30) calendar days of the Court's entry of the Asset Preservation Stipulation and Order, must submit to the United States a document setting forth in detail the procedures implemented to effect compliance with this Section. Upon receipt of the document, the United States will inform Defendants within ten (10) business days whether, in its sole discretion, the United States approves or rejects Defendants' compliance plan. Within ten (10) business days of receiving a notice of rejection, Defendants must submit a revised compliance plan. The United States may request that the Court determine whether Defendants' proposed compliance plan fulfills the requirements of Paragraph XII.A.

## XIII. LIMITATIONS ON REACQUISITIONS

Defendants may not reacquire any part of or any interest in the Divestiture Assets during the term of this Final Judgment without prior authorization of the United States.

## XIV. 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.

## XV. ENFORCEMENT OF FINAL JUDGMENT

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. Defendants agree 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 Defendants waive 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 and to restore the competition the United States alleges was harmed by the challenged conduct. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In an enforcement proceeding in which the Court finds that Defendants have 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 a Defendant, whether litigated or resolved before litigation, that 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 (4) years following the expiration of this Final Judgment, if the United States has evidence that a Defendant violated this Final Judgment before it expired, the United States may file an action against that Defendant in this Court requesting that the Court order: (1) Defendant to comply with the terms of this Final Judgment for an additional term of at least four (4) years following the filing of the enforcement action; (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.

## XVI. EXPIRATION OF FINAL JUDGMENT

Unless the Court grants an extension, this Final Judgment will expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestiture has been completed and continuation of this Final Judgment is no longer necessary or in the public interest.

## XVII. 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

_____

United States District Judge

| Exhibit 1: Danfoss Hydraulic Steering Unit Licenses Granted to Acquirer | | | |
|---|---|---|---|
| **Patent No** | **Title** | **Country** | **Grant Date** |
| EP 1 910 151 | Electrohydraulic Steering System with Cut-Off Valve and Sensor | Denmark | 6-Oct-10 |
| EP 1 910 151 | Electrohydraulic Steering System with Cut-Off Valve and Sensor | France | 6-Oct-10 |
| EP 1 910 151 | Electrohydraulic Steering System with Cut-Off Valve and Sensor | Germany | 6-Oct-10 |
| EP 1 910 151 | Electrohydraulic Steering System with Cut-Off Valve and Sensor | Great Britain | 6-Oct-10 |
| EP 1 910 151 | Electrohydraulic Steering System with Cut-Off Valve and Sensor | Italy | 6-Oct-10 |
| CN 101233040 | Electrohydraulic Steering System with Cut-Off Valve and Sensor | China | 12-Oct-11 |
| US 7,677,351 | Electrohydraulic Steering System with Cut-Off Valve and Sensor | USA | 16-Mar-10 |
| 3410349 | Plug | European Design | 7-Oct-16 |
| 304354829 | Plug | China | 14-Nov-17 |

| Exhibit 2: Eaton Orbital Motor Licenses Granted to Acquirer | | | |
|---|---|---|---|
| **Patent No** | **Title** | **Country** | **Grant Date** |
| 201380038257.X | COMBINED MOTOR AND BRAKE ROTATING BRAKE-RELEASE PISTON | China | 28-Dec-16 |
| 2895739 | COMBINED MOTOR AND BRAKE ROTATING BRAKE-RELEASE PISTON | European Patent Convention | |
| 6214652 | COMBINED MOTOR AND BRAKE ROTATING BRAKE-RELEASE PISTON | Japan | 29-Sep-17 |
| 9175563 | COMBINED MOTOR AND BRAKE WITH ROTATING BRAKE-RELEASE PISTON | United States | 3-Nov-15 |
| EP2875237 | FREEWHEEL HYDRAULIC MOTOR | European Patent Convention | 28-Mar-18 |
| 602013035067.1 | FREEWHEEL HYDRAULIC MOTOR | Germany | 28-Mar-18 |
| EP2875237 | FREEWHEEL HYDRAULIC MOTOR | Great Britain | 28-Mar-18 |
| 502018000016462 | FREEWHEEL HYDRAULIC MOTOR | Italy | 28-Mar-18 |
| 9551222 | FREEWHEEL HYDRAULIC MOTOR | United States | 24-Jan-17 |

| Exhibit 3: Eaton Hydraulic Steering Unit Licenses to Acquirer | | | |
|---|---|---|---|
| **Patent No** | **Title** | **Country** | **Grant Date** |
| 6769249 | LOW SLIP STEERING SYSTEM AND IMPROVED FLUID CONTROLLER THEREFOR | United States | 3-Aug-03 |
| 6769451 | POWER BEYOND STEERING UNIT WITH BYPASS | United States | 3-Aug-03 |
| 6782698 | STEERING CONTROL UNIT WITH LOW NULL BAND LOAD SENSING BOOST | United States | 31-Aug-03 |
| EP2250068 | FLUID CONTROLLER WITH MULTIPLE FLUID METERS | Denmark | 10-Jul-13 |
| EP2250068 | FLUID CONTROLLER WITH MULTIPLE FLUID METERS | France | 10-Jul-13 |
| 602009017015.5 | FLUID CONTROLLER WITH MULTIPLE FLUID METERS | Germany | 10-Jul-13 |
| EP2250068 | FLUID CONTROLLER WITH MULTIPLE FLUID METERS | Great Britain | 10-Jul-13 |
| EP2250068 | FLUID CONTROLLER WITH MULTIPLE FLUID METERS | Italy | 10-Jul-13 |
| EP2250068 | FLUID CONTROLLER WITH MULTIPLE FLUID METERS | Spain | 10-Jul-13 |
| 8225603 | FLUID CONTROLLER WITH MULTIPLE FLUID METERS | United States | 24-Jul-12 |
| 3010785B1 | FLUID CONTROLLER WITH LOAD SENSE AND FLOW AMPLIFICATION | European Patent Convention | 17-Jun-14 |
| 9920776 | FLUID CONTROLLER WITH LOAD SENSE AND FLOW AMPLIFICATION | United States | 20-Mar-18 |
| 4725695 | FLUID CONTROLLER AND FLUID METER BYPASS ARRANGEMENT | Japan | 22-Apr-11 |
| 529996 | FLUID CONTROLLER AND FLUID METER BYPASS ARRANGEMENT | South Korea | 14-Nov-11 |

| Exhibit 4: Orbital Motor Components for Eaton's HP30 2-Speed Model 22 Orbital Motor Product | |
|---|---|
| **Component Part Number** | **Part Description** |
| 8483-000 | Shaft |
| 8731-000 | Front Retainer |
| 6037923-001 | Bearing Housing |
| 202879-004 | Drive Spacer |
| 5992182-008 | Drive |
| 5992182-010 | Drive |
| 9004-002 | Quad Ring |
| 8732-000 | Backup Washer |
| 6212-000 | Dust Seal |
| 6037922-001 | Adapter Plate |
| 6181-000 | Bearing Spacer |
| 9001-002 | Thrust Bearing Washer |
| 9001-003 | Thrust Bearing Washer |
| 9001-004 | Thrust Washer |
| 9002-003 | Thrust Bearing |
| 9002-004 | Thrust Bearing |
| 9003-002 | Radial Bearing |
| 16292-100 | Cap Screw |
| 15045-000 | Seal |
| 25001-046 | O Ring |

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

| | |
|---|---|
| UNITED STATES OF AMERICA,<br>Plaintiff,<br>v.<br>DANFOSS A/S,<br>and<br>EATON CORPORATION PLC,<br>Defendants. | Civil Action No.: 1:21-cv-1880-CJN |

# COMPETITIVE IMPACT STATEMENT

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 relating to the proposed Final Judgment filed in this civil antitrust proceeding.

## I. NATURE AND PURPOSE OF THE PROCEEDING

On January 21, 2020, Defendant Danfoss A/S ("Danfoss") entered into a binding agreement with Defendant Eaton Corporation ("Eaton") to acquire Eaton's hydraulics business for approximately $3.3 billion in cash. The United States filed a civil antitrust Complaint on July 14, 2021 seeking to enjoin the proposed transaction. The Complaint alleges that the likely effect of this transaction would be to substantially lessen competition in the design, manufacture, and sale of orbital motors and hydraulic steering units in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

At the same time the Complaint was filed, the United States filed a proposed Final Judgment and an Asset Preservation Stipulation and Order ("Stipulation and Order"), which are designed to remedy the loss of competition alleged in the Complaint.

Under the proposed Final Judgment, which is explained more fully below, Defendant Danfoss is required to divest the following assets: the Danfoss Orbital Motor Business; the Danfoss Steering Unit Business; the Eaton Orbital Motor Assets; the Eaton Steering Unit Assets, and certain Intellectual Property (collectively "The Divestiture Assets"). Under the terms of the Stipulation and Order, Defendants must take certain steps to ensure that the Divestiture Assets that must be divested are operated as ongoing, economically viable, competitive Divestiture Assets for the design, manufacture, and sale of orbital motors and steering units and must take all other actions to preserve and maintain the full economic viability, marketability, and competitiveness of the Divestiture Assets to be divested.

The United States and Defendants 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 EVENTS GIVING RISE TO THE ALLEGED VIOLATION

### (A) The Defendants and the Proposed Transaction

Danfoss and Eaton are global corporations based in Nordborg, Denmark and Dublin, Ireland, respectively, that manufacture components of hydraulic power systems for industrial and agricultural use. Defendants' hydraulic components make it possible to steer, propel, and operate equipment used to pave roads, harvest produce, construct buildings, and perform other heavy industrial and agricultural tasks across the United States every day. Pursuant to a Transaction Agreement dated January 21, 2020, Danfoss intends to acquire Eaton's hydraulics business for approximately $3.3 billion.

### (B) The Competitive Effects of the Transaction

The Complaint alleges that the transaction as proposed will lead to anticompetitive effects in the markets for the design, manufacture, and sale of hydraulic orbital motors ("orbital motors") and hydraulic steering units ("steering units").

**a. Relevant Product Markets**

The Complaint alleges that orbital motors for mobile off-road equipment and steering units for mobile off-road equipment are lines of commerce, or relevant product markets, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act, 15 U.S.C. § 18. Orbital motors, also called "low-speed, high-torque" motors, are a low-cost way to move heavy loads in a slow, and thus controlled, way. Steering units direct hydraulic fluid in response to commands from equipment operators and are necessary for any hydraulic steering system to function.

In the event of a small but significant increase in price by a hypothetical monopolist of orbital motors, the Complaint alleges that substitution away from orbital motors would be insufficient to render the price increase unprofitable. Other technologies, such as vane, gear, piston, or electric motors, do not offer the same level of performance, are less efficient, or cost more than an orbital motor. Therefore, these technologies are not reasonable substitutes for orbital motors. Orbital motors for mobile off-road equipment are therefore a line of commerce, or relevant product market, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act, 15 U.S.C. § 18.

Similarly, in the event of a small but significant increase in price by a hypothetical monopolist of steering units, the Complaint alleges that substitution away from steering units would be insufficient to render the price increase unprofitable. Electric steering technology—the only alternative steering system that does not require a hydraulic steering unit—is largely unproven and more expensive than hydraulic steering technology. The switching costs from hydraulic steering to electric steering are high and

would require a costly redesign by Original Equipment Manufacturers ("OEMs"). Steering units for mobile off-road equipment are therefore a line of commerce, or relevant product market, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act, 15 U.S.C. § 18.

**b. Relevant Geographic Markets**

The Complaint alleges that OEMs located in the United States wish to avoid business disruption and cannot reasonably turn to suppliers without a U.S. presence for the supply of orbital motors or steering units for mobile off-road equipment. Long lead times due to international shipping and unexpected delays in the delivery of products can cause significant business disruption. Customers similarly require that suppliers warehouse new and replacement parts to avoid costly delays or interruptions to business operations and expect local service and support from suppliers. Thus, a hypothetical monopolist of orbital motors or steering units sold in the United States could profitably impose a small but significant non-transitory increase in price for orbital motors or steering units without losing sufficient sales to render the price increase unprofitable. Nor would the price increase be defeated by arbitrage, *e.g.*, by OEMs purchasing through subsidiaries located outside the United States. Accordingly, the relevant geographic market for purposes of analyzing the effects of the acquisition on orbital motors and steering units for mobile off-road equipment under Section 7 of the Clayton Act, 15 U.S.C. § 18, is the United States.

**c. Anticompetitive Effects of the Proposed Transaction**

The Complaint alleges that the transaction as proposed would lessen competition and harm customers for orbital motors and steering units for mobile off-road equipment in the United States. The Herfindahl-Hirschman Index ("HHI"), as articulated in the Horizontal Merger Guidelines issued by the Department of Justice and the Federal Trade Commission, measures the likely anticompetitive effects of an acquisition by assessing

how concentrated a market is. The more concentrated a market, the higher the likelihood that a transaction will result in a meaningful reduction in competition and harm customers. HHI calculations in the markets for both orbital motors and steering units indicate that the proposed acquisition will result in highly concentrated markets and is thus presumed likely to enhance market power.

The HHI indicators of highly concentrated markets and enhanced market power are consistent with historical head-to-head competition between Danfoss and Eaton to supply orbital motors and steering units for mobile off-road equipment. Danfoss and Eaton compete directly on price, quality, product innovation, delivery, and technical service, and the competition between them has benefited U.S. customers of orbital motors and steering units for mobile off-road equipment. Danfoss and Eaton have a reputation for high-quality orbital motors and steering units, product developments that benefit OEMs, an extensive network of distributors throughout the United States, and localized customer support and service. As a result, Danfoss and Eaton are considered to be the two primary—and sometimes the only two—suppliers of orbital motors and steering units to customers in the United States.

**d. Difficulty of Entry**

The Complaint alleges that entry of additional competition into the design, manufacture, and sale of orbital motors and steering units sold in North America is unlikely to be timely, likely, or sufficient to prevent the harm to competition caused by Danfoss's acquisition of Eaton's hydraulics business. A new entrant must have the technical capabilities necessary to design, manufacture, and sell orbital motors and steering units that meet customer requirements for quality, performance, and reliability. Additionally, a new entrant must have the requisite scale, an established reputation, and

an extensive network of distributors to supply to all customers throughout the United States.

## III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The relief required by the proposed Final Judgment will remedy the loss of competition alleged in the Complaint by establishing an independent and economically viable competitor in the market for the design, manufacture, and sale of orbital motors and steering units. Paragraph IV.A of the proposed Final Judgment requires Defendant Danfoss, within 60 days after the entry of the Stipulation and Order by the Court, to divest the Divestiture Assets to Interpump Group S.p.A. ("Interpump") or an alternative acquirer acceptable to the United States, in its sole discretion. If the 60 days expire while Defendants are waiting for regulatory approval from U.S. or international regulators, Paragraph IV.B extends the time allowed for the divestiture to take place to ten calendar days after the Regulatory Approval has been received. The extension may be no longer than 30 calendar days, unless the United States, in its sole discretion, consents to an additional extension.

### (A) Divestiture Assets

The Divestiture Assets consist of the Danfoss Divestiture Assets and the Eaton Divestiture Assets. Taken together, the Divestiture Assets will form a viable, ongoing business that can compete effectively in the hands of an acquirer approved by the United States, in its sole discretion. The combination of product model lines from both Defendants ensures that an acquirer will have the breadth and scale necessary to succeed while preserving Danfoss's headquarters in Nordborg, Denmark, which houses businesses that are not being divested.

### (B) Danfoss Divestiture Assets

The Danfoss Divestiture Assets are defined in Paragraph II.O as all tangible and intangible assets relating to or used in connection with the Danfoss Orbital Motor

Business or the Danfoss Hydraulic Steering Unit Business—including three facilities that are located in Hopkinsville, Kentucky; Wroclaw, Poland; and Parchim, Germany. The Danfoss Orbital Motor Business and Danfoss Hydraulic Steering Unit Business, in turn, are defined by model of orbital motor or steering unit in Paragraphs II.E and II.F and comprise Danfoss's business of designing, manufacturing, and selling these orbital motors and steering units in the United States. The Danfoss Divestiture Assets also include assets necessary for the acquirer to manufacture Danfoss' S70 model of steering unit, which currently is in development. Certain assets located in Zhenjiang, China and Nordborg, Denmark are excluded from the Danfoss Divestiture Assets because they are not used for the orbital motors and hydraulic units at issue for sale to U.S. customers.

**(C) Eaton Divestiture Assets**

The Eaton Divestiture Assets are defined in Paragraph II.P as all tangible and intangible assets relating to or used in connection with the Eaton Orbital Motor Assets or the Eaton Hydraulic Steering Unit Assets. The Eaton Orbital Motor Assets and Eaton Hydraulic Steering Unit Asset, in turn, are defined by model of orbital motor or steering unit in Paragraphs II.H and II.I and comprise all the assets used to manufacture these models of orbital motors and steering units. Unlike the Danfoss Divestiture Assets, the Eaton Divestiture Assets do not include real property. Instead, the Eaton Orbital Motor Assets and Eaton Hydraulic Steering Unit Assets will move to the divested facility located in Hopkinsville, KY. The Eaton Divestiture Assets will include all fixed assets, machinery, and manufacturing equipment for the Eaton Orbital Motor Assets and Eaton Hydraulic Steering Unit Assets except Eaton's Series 20 model of hydraulic steering unit products. The Eaton Divestiture Assets also do not include the transfer of paint line assets (*see* Paragraph II.Q), which are instead included in the Danfoss Divestiture Assets.

**(D) Intellectual Property**

With the exceptions of the intellectual property listed in Exhibits 1, 2, or 3, and

the Char Lynn license, all Intellectual Property including, but not limited to (a) patents, patent applications, and inventions and discoveries that may be patentable, (b) registered and unregistered copyrights and copyright applications, and (c) registered and unregistered trademarks, trade dress, service marks, trade names, and trademark applications will be divested to the acquirer.

The intellectual property listed in Exhibits 1, 2, and 3 is necessary for the Divestiture Assets as well as for assets that will be retained by Defendant Danfoss. Consequently, the acquirer will receive worldwide, non-exclusive, royalty-free, perpetual, paid-up, irrevocable licenses to the intellectual property listed in Exhibits 1, 2, and 3. Likewise, the acquirer will receive a worldwide, non-exclusive, royalty-free, perpetual, paid-up, irrevocable license to use the Char Lynn name, which is used for certain Eaton orbital motor models. This license will allow the acquirer to transition these products to its own product names.

**(E) Divestiture Provisions**

Section IV of the proposed Final Judgment contains additional detail about how the divestitures should be carried out. Defendants are required to act expeditiously (Paragraph IV.C), to divest the Divestiture Assets in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets will be used as a part of a viable ongoing business and will remedy the competitive harm alleged in the Complaint (Paragraph IV.D). The divestiture must be made to an acquirer that, in the United States' sole judgment, has the intent and capability to compete effectively in the design, manufacture and sale of orbital motors and hydraulic steering units for mobile off-road equipment (Paragraph IV.E) and must be done in such a manner that Defendants cannot interfere in the acquirer's efforts to compete effectively in the design, manufacture, and sale of orbital motors and hydraulic steering units for mobile off-road equipment. If the Divestiture Assets are divested to an acquirer other than Interpump, Paragraphs IV.G and

IV.H require Defendants to make certain information available to the prospective acquirer, including a copy of the proposed Final Judgment.

Paragraph IV.I of the proposed Final Judgment contains provisions intended to facilitate the acquirer's efforts to hire certain employees. Specifically, Paragraph IV.I of the proposed Final Judgment requires Defendant Danfoss to provide the acquirer and the United States with organization charts and information relating to these employees and to make them available for interviews. It also provides that Defendants must not interfere with any efforts by the acquirer to hire these employees. In addition, for employees who elect employment with the acquirer, Defendant Danfoss must waive all non-compete and non-disclosure agreements, vest and pay to these employees (or to the acquirer for payment to the employee) on a prorated basis any bonuses, incentives, other salary, benefits or other compensation fully or partially accrued at the time of the transfer of the employee to the acquirer; vest any unvested pension or other equity rights; and provide all other benefits that the employees would generally be provided had those employees continued employment with Defendants, including but not limited to any retention bonuses or payments.

Paragraph IV.J of the proposed Final Judgment ensures that the Divestiture Assets are unencumbered and operable from the first day that the acquirer takes ownership. Paragraph IV.L ensures that the acquirer will receive all necessary licenses, registrations, and permits to operate the Divestiture Assets once they are transferred.

Paragraph IV.K of the proposed Final Judgment will facilitate the transfer to the acquirer of customers and other contractual relationships that are included within the Divestiture Assets. Defendants must transfer all contracts, agreements, and relationships to the acquirer and must use best efforts to assign, subcontract, or otherwise transfer contracts or agreements that require the consent of another party before assignment, subcontracting, or other transfer.

Paragraph IV.M of the proposed Final Judgment requires Defendants to accomplish the move of Eaton Divested Equipment, as defined in Paragraph II.Q, to the acquirer's preferred location within 12 months after the Court's entry of the Stipulation and Order. In the interim, the supply contracts mandated by Paragraph IV.O will ensure that the acquirer can serve its new customer base without disruption. Paragraphs IV.M and IV.O allow the United States to extend the time to move the Eaton Divested Equipment and the terms of the supply contracts up to an additional six months if necessary.

Paragraphs IV.N and IV.O of the proposed Final Judgment address supply contracts between Defendant Danfoss and the acquirer. Paragraph IV.N requires Defendant Danfoss, at the acquirer's option, to enter into a supply contract for certain services and components, such as heat treatment services and gerotors, sufficient to meet the acquirer's needs, as determined by the acquirer, for a period of up to 12 months. The acquirer may terminate the supply contract, or any portion of it, without cost or penalty at any time upon commercially reasonable notice, and any amendments to or modifications of any provisions of a supply contract are subject to approval by the United States in its sole discretion. Paragraph IV.O requires Defendants to enter into a supply contract for certain models of orbital motor and steering unit products, for a period of up to 18 months. Upon the acquirer's request, the United States, in its sole discretion, may approve one or more extensions of the supply contracts contemplated in Paragraphs IV.N and IV.O for up to an additional six months. This provision will help to ensure that the acquirer will not face disruption to its supply of these input products during an important transitional period.

The proposed Final Judgment requires Defendant Danfoss to provide certain transition services to maintain the viability and competitiveness of the Divestiture Assets during the transition to the acquirer. Paragraph IV.P of the proposed Final Judgment

requires Defendant Danfoss, at the acquirer's option, to enter into a transition services agreement for back office, accounting, human resources, information technology services and support, employee health and safety, and technical training services and support for a period of up to 12 months. The acquirer may terminate the transition services agreement, or any portion of it, without cost or penalty at any time upon commercially reasonable notice. The paragraph further provides that the United States, in its sole discretion, may approve one or more extensions of this transition services agreement for a total of up to an additional 6 months and that any amendments to or modifications of any provisions of a transition services agreement are subject to approval by the United States in its sole discretion. Paragraph IV.P also provides that employees of Defendants tasked with supporting this agreement must not share any competitively sensitive information of the acquirer with any other employee of Defendants, unless such sharing is for the sole purpose of providing transition services to the acquirer.

Paragraph IV.Q of the proposed Final Judgment requires Defendants to refrain for one year from soliciting customers for the portion of the customer's business that is transferring to the acquirer. Defendants may respond to inquiries initiated by such customers and enter into negotiations at the request of the customers but must maintain a log of any such inquiries and requests. This provision gives the acquirer time to establish a performance record with new customers without interference from Defendants. Paragraph IV.Q allows the United States to extend the time period of this provision up to an additional six months if necessary.

Paragraph IV.R ensures that the terms of the proposed Final Judgment supersede any terms of agreement between Defendants and the acquirer that are inconsistent with the proposed Final Judgment.

**(F) Divestiture Trustee Provisions**

If Defendants do not accomplish the divestiture within the period prescribed in Paragraph IV.A or IV.B of the proposed Final Judgment, Section V of the proposed Final Judgment provides that the Court will appoint a divestiture trustee selected by the United States to effect the divestiture. If a divestiture trustee is appointed, the proposed Final Judgment provides that Defendant Danfoss must pay all costs and expenses of the trustee. The divestiture trustee's compensation must be structured so as to provide an incentive for the trustee based on the price and terms obtained and the speed with which the divestiture is accomplished. After the divestiture trustee's appointment becomes effective, the trustee must provide monthly reports to the United States setting forth his or her efforts to accomplish the divestiture. If the divestiture has not been accomplished within six months of the divestiture trustee's appointment, the United States may make recommendations to the Court, which will enter such orders as appropriate, in order to carry out the purpose of the Final Judgment, including by extending the trust or the term of the divestiture trustee's appointment by a period requested by the United States.

**(G) Monitoring Trustee Provisions**

Section X of the proposed Final Judgment provides that the United States may appoint a monitoring trustee who will have the power and authority to investigate and report on Defendants' compliance with the terms of the Final Judgment and the Stipulation and Order, including compliance with all supply and transition service agreements and progress of production line transfers, and will have other powers as the Court deems appropriate. The monitoring trustee will not have any responsibility or obligation for the operation of Defendants' businesses. The monitoring trustee will serve at Defendant Danfoss' expense, on such terms and conditions as the United States approves, and Defendants must assist the monitoring trustee in fulfilling his or her obligations. The monitoring trustee will provide periodic reports to the United States and will serve until the divestiture of all the Divestiture Assets is finalized pursuant to either

Section IV or Section V of this Final Judgment and Defendant Danfoss has complied with the terms of the transition services agreements and supply contracts provided for in this Final Judgment, unless the United States, in its sole discretion, determines a different period is appropriate.

**(H) Firewall Provision**

The relocation of the Eaton Divested Equipment to a location specified by acquirer will require Defendants' employees to train employees of the acquirer on how to properly operate the equipment. Section XII of the proposed Final Judgment requires Defendants to implement and maintain a firewall to prevent the exchange of competitively sensitive information between Defendants and the acquirer. Specifically, Defendants must implement and maintain procedures to prevent any employees of Defendants from sharing competitively sensitive information relating to the Divestiture Assets with personnel of Defendants with responsibilities relating to Danfoss's or Eaton's design, manufacture, and sale of hydraulic orbital motors or hydraulic steering units. Such a firewall will prevent competitively sensitive information about the Divestiture Assets from being used to influence business decisions relating to Danfoss's or Eaton's design, manufacturing, or sale of orbital motors or steering units. The implementation of these procedures for a two-year period will ensure that the information cannot be used while it is still competitively sensitive. After two years, any information will be sufficiently out of date to no longer pose a risk and the firewall can be eliminated. Under Paragraph XII.B, Defendants must, within 30 days of entry of the Stipulation and Order, submit to the United States a document setting forth in detail the procedures each has implemented to effect compliance with Section XII. The United States will determine, in its sole discretion, whether to approve or reject Defendants' proposed compliance plans.

**(I) Compliance and Enforcement Provisions**

The proposed Final Judgment also contains provisions designed to promote compliance with and make enforcement of the Final Judgment as effective as possible. Paragraph XV.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. Under the terms of this paragraph, Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance with the Final Judgment with the standard of proof that applies to the underlying offense that the Final Judgment addresses.

Paragraph XV.B provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment is intended to remedy the loss of competition the United States alleges would otherwise be harmed by the transaction. Defendants agree that they will abide by the proposed Final Judgment and that they 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.

Paragraph XV.C provides that if the Court finds in an enforcement proceeding that a Defendant has violated the Final Judgment, the United States may apply to the Court for an extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the Final Judgment, Paragraph XV.C provides that, in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, the Defendant must reimburse

the United States for attorneys' fees, experts' fees, and other costs incurred in connection with any effort to enforce the Final Judgment, including the investigation of the potential violation.

Paragraph XV.D states that the United States may file an action against a Defendant for violating the Final Judgment for up to four years after the Final Judgment has expired or been terminated. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for four years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

**(J) Term of the Final Judgment**

Finally, Section XVI of the proposed Final Judgment provides that the Final Judgment will expire 10 years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestiture has been completed and that continuation of the Final Judgment is no longer necessary or in the public interest.

## 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 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 Defendants.

## V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and Defendants 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. 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 the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the 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:

Jay Owen
Acting Chief, Defense, Industrials, and Aerospace Section
Antitrust Division
U.S. Department of Justice
450 Fifth Street, NW, Suite 8700
Washington, DC 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

## VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Danfoss's acquisition of certain assets and equity interests of Eaton's hydraulics business. The United States is satisfied, however, that the relief required by the proposed Final Judgment will remedy the anticompetitive effects alleged in the Complaint, preserving competition for the design, manufacture, and sale of orbital motors and hydraulic steering units. Thus, the proposed Final Judgment achieves all or substantially all of the relief the United States would have obtained through litigation but avoids the time, expense, and uncertainty of a full trial on the merits.

## VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

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). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

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

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States v. U.S. Airways Grp., Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the "court's inquiry is limited" in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a proposed Final Judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable").

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a

court may not "make de novo determination of facts and issues." *United States v. W. Elec. Co.*, 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Instead, "[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General." *W. Elec. Co.*, 993 F.2d at 1577 (quotation marks omitted). "The court should bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest." *Microsoft*, 56 F.3d at 1460 (quotation marks omitted); *see also United States v. Deutsche Telekom AG*, No. 19-2232 (TJK), 2020 WL 1873555, at *7 (D.D.C. Apr. 14, 2020). More demanding requirements would "have enormous practical consequences for the government's ability to negotiate future settlements," contrary to congressional intent. *Microsoft*, 56 F.3d at 1456. "The Tunney Act was not intended to create a disincentive to the use of the consent decree." *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g.*, *Microsoft*, 56 F.3d at 1461 (recognizing courts should give "due respect to the Justice Department's . . . view of the nature of its 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 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 citations omitted)); *United States v. Republic Servs., Inc.*, 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting

"the deferential review to which the government's proposed remedy is accorded"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) ("A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case."). The ultimate question is whether "the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'" *Microsoft*, 56 F.3d at 1461 (*quoting W. Elec. Co*., 900 F.2d at 309).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 ("[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.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using judgments proposed by the United States in antitrust enforcement, Pub. L. 108-237 § 221, and added 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 U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). "A court can make its public interest determination based on the competitive impact statement and response to public comments alone." *U.S. Airways*, 38 F. Supp. 3d at 76 (citing *Enova Corp.*, 107 F. Supp. 2d at 17).

## 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: July 14, 2021

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA:

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