



DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Hewlett Packard Enterprise Co., 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 Northern District of California in *United States of America v. Hewlett Packard Enterprise Co. and Juniper Networks, Inc.*, Civil Action No. 5:25-CV-00951-PCP (N.D. Cal.). On January 30, 2025, the United States filed a Complaint alleging that Hewlett Packard Enterprise Company's ("HPE") proposed acquisition of Juniper Networks, Inc. ("Juniper") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The proposed Final Judgment, filed on June 27, 2025, requires HPE to divest the HPE Instant On campus and branch business and license the source code for Juniper's Mist AI Ops software.

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 Northern District of California. 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 Civil Chief, San Francisco Office, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Room 10-0101, Box 36046, San Francisco, CA 94102 or ATR.Public-Comments-Tunney-Act-MB@usdoj.gov.

Suzanne Morris,

*Deputy Director Civil Enforcement Operations,
Antitrust Division.*

MICHAEL J. FREEMAN (OH BAR # 0086797)
Senior Litigation Counsel
JEREMY M. GOLDSTEIN (CA Bar # 324422)
Trial Attorney
United States Department of Justice, Antitrust Division
450 Fifth Street, NW, Suite 4000
Washington, DC 20530
Telephone: (202) 213-2774
Fax: (202) 514-5847
Email: Michael.Freeman@usdoj.gov

[Additional counsel listed on signature page]

Attorneys for Plaintiff
United States of America

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA

CASE NO. 5:25-CV-00951-PCP

Plaintiff,

v.

HEWLETT PACKARD ENTERPRISE CO.
and JUNIPER NETWORKS, INC.

COMPLAINT

Defendants.

1. The United States of America brings this civil action to prevent Hewlett Packard Enterprise Company (“HPE”) from acquiring a smaller, but innovative rival, Juniper Networks, Inc. (“Juniper”). HPE and Juniper are the second- and third-largest providers of commercial or “enterprise” wireless networking solutions, respectively, in the United States. The acquisition, if consummated, would result in two companies—market leader Cisco Systems, Inc. (“Cisco”) and HPE—controlling well over 70 percent of the U.S. market and eliminate fierce head-to-head competition between Defendants, who offer wireless networking solutions under the HPE Aruba and Juniper Mist brands.

2. For years, pressure from Juniper has forced HPE to discount deeply and invest in developing advanced software products and features as part of a multifaceted campaign to “Beat Mist.” The “Beat Mist” campaign failed. Having failed to beat Juniper’s Mist on the merits, HPE seeks to acquire Juniper instead for \$14 billion. This

proposed acquisition risks substantially lessening competition in a critically important technology market and thus poses the precise threat that the Clayton Act was enacted to prevent. It should be blocked.

INTRODUCTION

3. Wireless networking technology is critical in the modern workplace. Millions of Americans today create and share company resources and access the internet from wireless-enabled devices. Retail employees wirelessly process payments and log inventory. Doctors access medical records on phones and tablets and track patient care on the go. University students take notes on their laptops and access course materials from classrooms, dorm rooms, and school libraries. As mobile technology has improved and more services have migrated to the cloud, wireless networking technology in the workplace has become even more essential. Today, it is the primary means by which many employees connect to their employer's computer network and the internet.

4. Providing companies with commercial wireless networking technology is itself a big business. Every year, enterprises, including public and private companies, state and local agencies, and non-profit organizations, spend billions of dollars buying wireless networking solutions for their offices, stores, factories, and warehouses. Those solutions are built around wireless access points, which send and receive data via radio signals and are wired to networks through devices called campus switches. Enterprise-grade wireless networking solutions can simultaneously serve a larger number of users and support feature sets and functionalities more advanced than the consumer-grade wireless systems that most Americans have in their homes. Because many workplaces deploy a large number of access points—sometimes thousands across a single corporate campus—network administrators rely on sophisticated network management hardware and software to monitor and control them. By contrast, consumer-grade wireless networking systems that individuals purchase for their homes are generally managed device-by-device, and they often do not include systems for linking and managing multiple access points from a single location.

5. Enterprise-grade wireless networking solutions generally include wireless access points; the separate hardware or advanced software systems to monitor and

manage them; and related logistical support, including security updates and patches (collectively, “enterprise-grade WLAN solutions”). Today, the market for those solutions in the United States is highly consolidated: market-leader Cisco and Defendants collectively represent over 70 percent of it. For years, Cisco and HPE have been the two leading providers of enterprise-grade WLAN solutions to U.S. companies. Despite significant technological advances over the past decade—which, among other things, have radically changed how wireless networks are managed—Cisco and HPE’s market positions have stayed relatively stable at number one and number two in the market. While other vendors remain distant competitors, Juniper in recent years has risen to challenge Cisco and HPE. Today, Juniper is the third-largest provider in the United States and, like Cisco and HPE, it offers a portfolio of advanced wireless access points and a sophisticated network management system. It competes aggressively against Cisco and HPE in several distinct customer segments and industries.

6. Juniper’s growth in the market for enterprise-grade WLAN solutions has been swift. In 2019, Juniper acquired an independent networking startup, Mist Systems, with a portfolio of wireless access points and campus switches managed by a network management platform called Mist. Mist Systems had already differentiated itself by building tools optimized for remote cloud management and using artificial intelligence and machine learning tools (“AIOps”) to streamline network operations and improve the experience for network operators and users. The acquisition combined Mist Systems’ innovative technology with Juniper’s enterprise sales force and distribution network, and it launched Juniper into the upper tier of wireless system providers. For instance, internal market share estimates circulated by HPE executives show that Juniper increased its market share in North America for enterprise-grade wireless solutions from 1.7 percent in 2019 to 6.5 percent of the market by the end of 2021 despite pandemic-related supply chain constraints. Juniper executives are seeking additional growth in enterprise-grade WLAN solutions, aspiring for double-digit sales growth between 2023 and 2025.

7. Juniper’s ascent capitalized on and helped accelerate the industry’s burgeoning focus on AIOps and other tools that simplify and automate network maintenance. Those tools, which can materially decrease the cost of operating a wireless

network, include conversational virtual assistants that increase the productivity of network administrators and software that proactively searches for network misconfigurations and other issues before they cause network outages. Customers and competitors have come to associate Juniper with those tools. AI is often the main tool that customers associate with Juniper Mist. Customers acquainted with Juniper’s AIOps have demanded other vendors provide them as well.

8. Juniper’s competitors, including HPE, recognize Juniper as a competitive threat and have tracked Juniper’s growth in the markets for enterprise-grade wireless and other networking components with concern. In 2021 and 2022, senior HPE executives shared summaries of Juniper’s quarterly earnings reports, noting that in one quarter “Mist double[d] revenue!” HPE’s Head of Worldwide Sales commented that Juniper “did almost what we did which is concerning for me.” Other competitors similarly have shared estimates of Juniper’s quarterly performance with concern and considered changing their strategy in response.

9. HPE executives responded to Juniper’s growth in the enterprise-grade wireless and related markets through various initiatives to “Beat Mist” through targeted marketing, competitive pricing, and product innovation. For instance, in 2021 HPE executives created a “Beat Mist” listserv to share competitive intelligence and technical insights about Mist’s hardware and software features. The listserv also connected sales teams with engineers who could help them understand and rebut Juniper’s claims about its technology, and it helped sales teams better promote HPE’s competing network management platform, Aruba Central. The listserv has been in active use since it was created, with HPE executives continuing to share competitive intelligence well after Defendants announced their merger in January 2024. In 2022, HPE executives who believed their sales teams lacked training to effectively compete with Mist launched a “Beat Mist” training program for sales executives and solution engineers. HPE’s General Manager of U.S. Sales said he intended to “track every participant” and make the program “100% mandatory.”

10. HPE also invested in specific upgrades to its software to close gaps between its offerings and Juniper’s. In late 2021, as part of its development of next

generation Aruba Central network management software (“CNX”), HPE launched “Project Gravity,” a multi-year project focused on improving Aruba Central’s user interface and infusing its platform with features that use artificial intelligence and machine learning. Internally, HPE executives routinely described Project Gravity as critical to “Beat[ing] Mist” and driving sales in competitive matchups. For instance, in late December 2023, HPE’s former Head of Software Development, discussing Juniper’s competition for college and university customers, explained, “I (we) fully recognize the MIST threat for Aruba [worldwide] and have done so for a long time. . . . The risk is real and NOW. We need to put CNX in the hands of the customers NOW.”

11. The intensity of HPE and Juniper’s competition is clear from its ordinary-course documents. During a March 2021 public webinar on Mist’s AI-offerings, Juniper executives specifically targeted HPE’s network management system, which they characterized as an example of “old” technology compared to Mist’s “new” and innovative AI capabilities. Days later, HPE’s former Senior Vice President for Sales in the Americas encouraged his teams to combat Juniper’s marketing and sales, saying that he was “personally involved in 5 Head to Head street fights with Mist” and “[t]here are no rules in street fights.” He concluded his email with an encouragement: “KILL MIST!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!”

12. Having failed to beat Mist on the merits, HPE changed tactics and in January 2024 opted to try to buy Juniper instead. That decision puts at risk myriad consumer benefits that have resulted from competition between Defendants in the market for enterprise-grade WLAN solutions. Front-line sales executives regularly seek deep discounts to win or retain business targeted by the other company, and HPE has contemplated list price reductions for software and hardware products to avoid being undercut by Juniper on price. Defendants’ merger, if consummated, would eliminate head-to-head competition that has lowered prices and driven investment in network management software, and it would decrease pressure on HPE to discount and innovate in the future. For these and other reasons set forth in this Complaint, HPE’s proposed acquisition of Juniper threatens to substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and should be blocked.

BACKGROUND ON WIRELESS LOCAL AREA NETWORKING

Enterprise Wireless Solutions

13. Networks are comprised of computers, printers, smartphones, and other devices that are linked in order to send and receive data. Networks in single physical locations, like an individual office building or a school, are referred to as local area networks (“LAN”) or, alternatively, “campus” or “branch” networks depending on their size. “Wired” devices connect to a LAN using ethernet cables, whereas wireless-enabled devices connect through wireless access points. Wireless access points and wired devices are connected to multi-port devices, called switches, that serve as hubs for transmitting data within a LAN.

14. LANs can be connected to each other using physical lines or the internet to form a wide area network (“WAN”). Many WANs, like those that link a corporation’s various offices across the United States, are privately run and accessible only to people granted access; others are open to all. Individual LANs traditionally connected to a WAN using a router, but today can use software replacements, like software-defined WAN (“SD-WAN”). Enterprise switches, routers, and SD-WAN are distinct products from enterprise-grade wireless access points and the associated products used to operate and manage them.

15. University campuses, hospital complexes, and large corporate offices may have thousands of wireless access points, so network administrators rely on hardware and software systems to operate and manage them. Traditionally, network management has been done on-premises using wireless controllers, which are devices that channel and amplify bandwidth from a router, push firmware to wireless access points and configure their code, and aggregate telemetry data to help network administrators monitor connectivity and power use. Many organizations continue to use on-premises controllers, often for compliance or security reasons.

16. In recent years, network management has migrated from on-premises hardware to remote solutions located in the “cloud.” Cloud-based network management solutions can remotely calibrate wireless access points and monitor connectivity, making on-premises controllers superfluous. Cloud-managed network management solutions

typically have online portals or dashboards where network administrators can easily check the performance of every wireless access point on a LAN or WAN on a single screen. While many customers are still using on-premises management systems, the cloud-managed segment of the industry is growing rapidly due, among other things, to its convenience and efficiency. Using cloud-management, for instance, a network administrator for a national retail chain could monitor the health of access points at stores across the county from one location. The wireless access points in Juniper's Mist and HPE's Aruba portfolios were built to be cloud-managed, making both companies well-situated to take advantage of growth in that market segment.

17. With improvements in data collection and analysis, networking vendors like HPE and Juniper have introduced increasingly advanced features in their software solutions. Some of these features use artificial intelligence and machine learning to provide network administrators with greater insight into network performance and the causes of network failures. Others can automate functions traditionally performed by network administrators to meet customers' rising demand for tools that control management costs. For instance, Juniper Mist users have access to the Marvis Virtual Network Assistant, an interface that displays information in response to plain-language queries, and Marvis Minis, a tool that proactively searches for network misconfigurations and other potential issues, allowing network administrators to pinpoint and resolve connectivity issues before they impact users. Juniper estimates that at least 40 percent of enterprise customers will adopt some AIOps into their IT systems by 2025, and the company will continue benefiting from customers' increasing interest in those tools.

18. Vendors' network management solutions differ in the features and capabilities they offer to customers. While some vendors include cutting edge AIOps, others provide cheaper and more bare-bones network management solutions, offering customers a simple cloud-managed platform that monitors connectivity but provides few other features. Customers choose providers that offer products tailored toward their individualized networking needs.

19. Wireless access points generally reach the end of their useful life and need to be replaced every five to seven years, but vendors launch new generations of wireless

hardware more frequently and enterprise customers interested in deploying the best technology in their workplaces will refresh their wireless access points more frequently. A significant portion of enterprise customers keep their existing wireless networking provider during a technology refresh, given the high cost and disruption of replacing technology and re-training network administrators and IT personnel. Other enterprises, though, will solicit quotes from multiple vendors to ensure they are getting the best solutions for their needs.

20. While some very large enterprises have direct relationships with wireless networking vendors, most use value-added resellers to source their networking equipment. Leading vendors invest heavily in cultivating and growing relationships with value-added resellers; they are key to vendors' distribution networks and, when used effectively, magnify the vendors' own sales forces by encouraging enterprise sales. Those vendors offer their value-added resellers preferred pricing and volume discounts, which value-added resellers in turn pass on to their customers. Enterprise customers will often seek quotes from several value-added resellers to get the best price available from each vendor.

21. Some enterprises, including state and local governments and agencies, issue formal requests for proposals ("RFPs"), seeking bids from a range of wireless networking vendors. That process may result in a bidding war between vendors.

22. Large enterprises, regardless of whether they issue formal RFPs, generally expect vendors to offer additional discounts to win their business. They work with their value-added resellers to negotiate those discounts, using the threat of going with a competitor to win additional concessions. Certain value-added resellers are known to work exclusively with large, sophisticated enterprises or Fortune 1000 companies. Those value-added resellers may partner with Cisco, HPE, and Juniper, but not smaller wireless networking vendors that cater to small or medium-sized enterprises. Other value-added resellers that do cater to small and medium-sized businesses may partner with those smaller wireless networking vendors, but not Cisco, HPE, or Juniper.

23. Wireless networking vendors, like HPE and Juniper, are typically aware of an enterprise's incumbent provider and which of their competitors are competing for an

individual contract. Because each contract is individually negotiated, each vendor has the opportunity to adjust its quotes or bids depending on its perception of the competition it faces for a customer's business.

HPE and Juniper are Leading Providers of Enterprise-Grade WLAN Solutions

24. HPE, headquartered in Spring, Texas, competes in a number of technology markets, including general-purpose servers, cloud storage, and finance. Networking is one of its fastest growing divisions, and the company sells various networking products, including wireless access points and campus switches, under the Aruba brand and its legacy on-premises network management solution, Airwave. Enterprise-grade WLAN solutions in the United States represent a substantial portion of HPE's total campus networking sales.

25. Juniper, headquartered in Sunnyvale, California, offers a range of networking products, including wireless access points, wired switches, and network management software under the Mist brand. Enterprise-grade WLAN solutions in the United States represent a substantial portion of Juniper's total U.S. campus networking sales.

26. The U.S. market for enterprise-grade WLAN solutions, which include wireless access points, the hardware or software tools to manage them, and related logistical support, is highly concentrated. Cisco is by far the largest vendor and is more than twice as large as the next largest competitor, HPE. According to estimates from multiple third-party sources used internally by HPE executives, Cisco, HPE, and Juniper collectively represent over 70 percent of U.S. enterprise-grade wireless access point revenue or North America WLAN revenue. Cisco and Defendants' shares of the U.S. enterprise-grade WLAN market are roughly in line with their shares of the U.S. market for access points alone.

27. Customers choose HPE and Juniper over Cisco and other WLAN vendors for several reasons. Both have well-regarded portfolios of wireless access points and network management solutions that are built for cloud-management. Both have experienced sales forces, technical support organizations, and well-developed distribution

channels, and they have track records for working with large, sophisticated enterprises. While the same is true for Cisco, many WLAN customers suffer from “Cisco fatigue” due, among other things, to Cisco’s overlapping WLAN product portfolios—it sells wireless access points under two competing brands—and complex licensing practices.

Some WLAN Vendors Face Headwinds Competing for Large Enterprise Customers

28. While every organization’s networking needs are unique, large enterprise customers, including corporate campuses, research universities, and hospitals, tend to buy higher-end wireless access points and network management software that can cover a larger geographic footprint and allow more people to connect. Their networks are more likely to be mission critical than smaller customers’ networks; a network failure, for example, could make it impossible for a national retailer to conduct transactions and order inventory, or for health professionals to access medical records and track patient outcomes. As a result, large enterprise customers tend to demand more of their networking providers than smaller ones do.

29. Because of the complexity of their networks, these large enterprise customers are “high touch,” requiring vendors to have large and well-trained salesforces that can ensure their purchases integrate with the customer’s existing IT infrastructure and that can customize software features where needed. Large enterprise customers also seek vendors that can provide multiple networking components at the same time and offer sophisticated and feature-rich network management solutions. Large enterprise customers are also highly sensitive to vendors’ reputations and track-records, given the damage that disruptive network failures can cause their businesses.

30. Many enterprise-grade WLAN vendors in the market today face headwinds competing for large enterprises’ business. Several vendors lack sales and support organizations required to design and customize networks for their customers. Some vendors primarily cater toward small businesses rather than Fortune 500 companies, research universities, and other organizations with complex networking needs. Still other vendors use cheap manufacturing components sourced from Chinese manufacturers rather than U.S. corporations like Broadcom and Qualcomm, whose

products are considered more reliable and secure, offer shorter warranties or less desirable support packages, or have bare-bones network management software that is less feature-rich than products offered by Cisco, HPE, and Juniper.

THE RELEVANT MARKET FOR EVALUATING THE PROPOSED MERGER

31. The proposed acquisition threatens to substantially lessen competition in the market for enterprise-grade WLAN solutions. That product market constitutes a line of commerce as that term is used in Section 7 of the Clayton Act, 15 U.S.C. § 18, and it is a relevant product market in which competitive effects can be assessed.

32. Market definition is a tool to help courts assess an area of effective competition impacted by a merger. A relevant market includes a product and geographic dimension. Courts define relevant product and geographic markets to help identify where competition may be harmed by a merger. Defining the relevant market “is not an end unto itself; rather, it is an analytical tool used to ascertain the ‘locus of competition.’”¹

33. There are many tools available to identify relevant markets. The outer boundaries of a relevant product market are determined by looking to the substitution choices made by customers in response to potential changes in price or quality. Courts often look to “practical indicia” to identify the boundaries of an antitrust market or submarket to determine whether two products are economic substitutes and compete within the same market or submarket, *Brown Shoe Co. v. U.S.*, 370 U.S. 294, 325 (1962). Courts also utilize economic tools, such as the “hypothetical monopolist” test, which asks whether a firm that was the only present and future seller of the products in a proposed market—a hypothetical monopolist—likely would undertake at least a small but significant and non-transitory increase in price or worsening of terms (“SSNIPT”) for at least one product in the proposed market.²

Product Market

34. Enterprise-grade WLAN solutions are a relevant product market and line of commerce within the meaning of Section 7 of the Clayton Act. Enterprise-grade

¹ *United States v. Bertelsmann SE & Co. KGAA*, 646 F. Supp.3d 1, 24 (D.D.C. 2022) (quoting *Brown Shoe Co. v. United States*, 370 U.S. 294, 320-21 (1962)).

² United States Department of Justice and Federal Trade Commission, Merger Guidelines (2023 ed.) § 4.3.

WLAN solutions are sold to businesses, school systems, and other commercial and non-profit organizations. They can serve a large number of users simultaneously and support advanced feature sets and functionalities. Unlike consumer-grade WLAN, enterprise-grade WLAN solutions include systems to manage multiple access points—sometimes thousands of them—across a single location. Systems used to manage multiple access points include hardware-based controllers, cloud-managed services, and network management software. Those systems monitor connectivity, service quality, and other critical network functions.

35. WLAN vendors offer products with a range of hardware and software features optimized for different environments and customer needs. Because an individual vendor’s WLAN solutions may not be ideal for every customer, HPE and Juniper may be able to charge different prices and include different terms for their customers. Customers are also unable to engage in arbitrage by purchasing indirectly from or through other customers to defeat potential price increases or worsening of terms.

36. The market for enterprise-grade WLAN solutions exhibits many of the “practical indicia” that courts look for when determining the boundaries of a relevant market, including peculiar characteristics and uses, distinct customers, and industry recognition. For example:

- WLAN solutions use radio waves to connect users’ devices to a local area network. Consumers do not view wired solutions, which connect user devices directly to campus switches through ethernet cables, as reasonable substitutes, even though both permit users to access the network, because wired connections do not permit users freedom of movement. Wired connections are used more often today for desktop computers, printers, and other stationary devices.
- Customers who purchase enterprise-grade WLAN solutions, which are tailored for commercial environments, with wireless access points designed to be linked to cover a larger geographic area and managed by a hardware or software system, are not generally able to be served by consumer-grade WLAN solutions.
- Customers typically purchase network management software and other control systems along with wireless access points; mixing and matching access points and

control systems from multiple vendors generally is not a feasible alternative to a complete WLAN solution. This is because wireless access points sold by Cisco, HPE, Juniper, and other WLAN vendors often cannot be managed by third-party network management software, and these firms generally do not sell their network management software on a standalone basis to be used with third-party hardware.

- Industry analysts, including 650 Group Market Intelligence Research (“650 Group”), regularly track revenue growth for an enterprise-grade WLAN market and calculate various vendors’ shares of that market. Those analysts separately track revenues for enterprise-grade and consumer-grade WLAN, and, for enterprise-grade WLAN, include revenues from wireless access points, controllers, and cloud-managed services. Defendants regularly circulate market share estimates produced by 650 Group and other industry analysts and rely on them to gauge their performance relative to competitors.

37. Purchasing wireless access points from an original device manufacturer and either using a third-party network management software or creating a bespoke software solution in-house is not a reasonable substitute for most customers looking to purchase enterprise-grade WLAN solutions. Among other things, few WLAN customers have the IT resources and expertise to design and procure their own access points and network management systems or the scale needed to make buying directly cost-effective. Customers would not substitute solutions involving third-party or bespoke software in sufficient numbers to deter a hypothetical monopolist of enterprise-grade WLAN solutions from undertaking a SSNIPT.

38. Consumer-grade WLAN solutions also are not a reasonable substitute for most enterprise-grade WLAN solutions. Consumer wireless access points are typically smaller, capable of handling fewer users simultaneously, less reliable, and designed to cover smaller geographic areas. Among other things, because consumer-grade WLAN solutions are managed device-by-device, they generally do not include systems for linking and managing large numbers of access points from a single location. Customers would not substitute consumer-grade WLAN solutions in sufficient numbers to deter a

hypothetical monopolist of enterprise-grade WLAN solutions from undertaking a SSNIPT.

Geographic Market

39. The relevant geographic market for HPE’s proposed acquisition of Juniper is the United States. Several enterprise-grade WLAN vendors that are active abroad, including Chinese multinational Huawei Technologies Company (“Huawei”), have been identified as potential security threats by the U.S. government and, under federal law, are barred from competing for business domestically. As a result, customers in the United States have fewer options than they would if they were based abroad, and HPE and Juniper may be able to charge different prices and include different terms for those customers. Customers in the United States are also unable to engage in arbitrage by purchasing indirectly from or through other customers outside the United States in order to defeat potential price increases or worsening of terms. The geographic market includes all sales made to customers in the United States, regardless of the WLAN vendor’s location. Defendants regularly rely on industry analysts, including International Data Corporation (“IDC”), that calculate wireless access point market shares for the United States.

HPE’S ACQUISITION OF JUNIPER IS PRESUMPTIVELY UNLAWFUL AND THREATENS COMPETITION IN VIOLATION OF THE CLAYTON ACT

40. The proposed merger has an effect that “may be substantially to lessen competition.” *See* 15 U.S.C. § 18. Not only is the transaction presumptively unlawful, but other evidence also illustrates the threat to competition presented by eliminating Juniper as a strong competitive force.

A. The Proposed Acquisition is Presumptively Unlawful

41. The proposed merger is presumptively unlawful. It would significantly increase concentration in an already consolidated relevant market for enterprise-grade WLAN solutions. The proposed acquisition would result in two firms controlling over 70 percent of the relevant market.

42. To measure market concentration, courts often use the Herfindahl-Hirschman Index (“HHI”) as described in Section 2.1 of the 2023 *Merger Guidelines*. *See*

United States Department of Justice and Federal Trade Commission, Merger Guidelines (2023 ed.) § 2.1. HHIs range from 0 in markets with no concentration to 10,000 in markets where one firm has 100 percent market share. Under the *Merger Guidelines*, a market with HHI greater than 1,800 is highly concentrated, and a change of more than 100 points is a significant increase. *See Fed. Trade Comm'n v. Kroger Co.*, No. 3:24-cv-00347, 2024 WL 5053016, at *15 (D. Or. Dec. 10, 2024). A merger that creates or further consolidates a highly concentrated market that involves an increase in the HHI of more than 100 points is presumed to substantially lessen competition and is presumptively unlawful. *See id.* at *15 (citing U.S. Dep't of Justice & Fed. Trade Commission, Merger Guidelines § 2.1 (2023)).

43. The proposed merger between HPE and Juniper easily clears these hurdles in the markets for enterprise-grade WLAN solutions and is presumptively unlawful, with a pre-merger HHI over 3,000 and a change of at least 250 points using IDC's estimates of U.S. market shares for wireless access points. Cisco and Defendants' shares of the U.S. enterprise-grade WLAN market are roughly in line with their shares of the U.S. market for access points alone.

The Merger Threatens Higher Prices and Less Innovation By Eliminating Fierce Head-to-Head Competition Between Defendants

44. HPE and Juniper compete fiercely to win business. They frequently submit bids to provide enterprise-grade WLAN to the same customers, and they are often the top two bidders. Customers—particularly large enterprise customers—frequently benefited from competition between HPE and Juniper, which, among other things, has forced HPE to offer significant discounts to win business in head-to-head matchups against Juniper. For instance:

- In 2021 and 2022, HPE and Juniper were the top two contenders for a multi-million-dollar contract to provide WLAN solutions to a large research university in the Northeast. HPE's sales teams described the opportunity as “a very competitive deal against [Juniper's] Mist that we need to win” and sought approval for a 79 percent discount on hardware and a 73 percent discount on software to win the deal. Juniper ultimately won the contract.

- In 2023, HPE and Juniper were the top two contenders to provide WLAN solutions to a large research university system in the Northwest—an HPE Aruba customer since 2005—and each offered discounts against each other to win the contract. Juniper ultimately won the contract, and an HPE executive described the loss as “a big hit, surprise.”
- In 2023, HPE and Juniper were the top two contenders for a \$100 million contract to provide WLAN solutions to a large healthcare system. Both parties discounted deeply to win the business, which Juniper ultimately won. Reflecting on the loss, HPE’s Head of Sales for the Americas wrote, “This is a huge blow and Juniper will leverage this one and continu[e] to bring credibility to there [sic] solution.”

45. HPE also compares the pricing of its wireless access points and network software licenses to Juniper’s and recommends deep discounts below list prices to remain competitive. For instance, an internal July 2022 price calibration report on Aruba Central licenses for advanced wireless access points recommended that HPE lower the price of its software package to “compete better with [Juniper’s] Mist and [Cisco’s] Meraki,” which it identified as HPE’s “primary competitors.”

46. In the field, HPE sales teams have raised concerns about Juniper undercutting HPE on price, seeking authority to offer steep pricing discounts to win business against Juniper. For instance, in April 2023, HPE’s former Senior Vice President of Software shared feedback that, in a recent head-to-head competition, HPE’s “Aruba [product] was very, very expensive” and Juniper’s “Mist [product] was [millions of dollars] cheaper.” In response, HPE’s Head of Sales for the Americas confirmed that, “everything [they] are saying is accurate . . . [o]ur 4x4 6e APs for example is approx. 400.00 list price higher. It is killing us in K12 and Higher Ed.” In other words, Juniper was undercutting HPE on price in education, costing HPE business in one of its stronger customer verticals.

47. Head-to-head competition has also benefited customers by forcing Defendants and other competitors to innovate their network management software. In internal documents, HPE executives recognize the necessity of addressing Juniper’s perceived product advantages, and they directly link software initiatives, like Project

Gravity, to HPE’s efforts to “Beat Mist.” HPE’s internal documents do not show the same urgency to out-innovate Cisco on network management software, and many enterprise customers do not consider Cisco an innovation leader in AIOps and other advanced software tools. For instance, an October 2022 HPE strategy deck stated that to “grow cloud managed revenues”—one of six strategic priorities and initiatives for the 2023 fiscal year—HPE had to “Beat Mist by leveraging improved [user experience] with [AIOps]-infused workflows.” In an email a month later, HPE’s former Senior Vice President of Software wrote that while HPE had mostly closed the gap on AIOps, Mist still had an advantage in “their [user interface (“UI”)] workflows and speedy UI. . . . We can beat them on the UI workflows with Project Gravity,” but it “can’t come soon enough.” Mist was still putting pressure on HPE’s “top customers” in September 2023, leading HPE’s former Senior Vice President of Software to write that, until HPE launched a revamped network management software solution, “we cannot rest easy.”

48. Many large customers—including each of the three customers mentioned above—describe Cisco, HPE, and Juniper as the three leading vendors for their customer segments and believe Cisco’s products compare unfavorably to HPE’s and Juniper’s on price, features, and reliability. Those customers benefit from having Juniper as a credible alternative to Cisco and HPE in the market. If HPE successfully acquired Juniper, the acquisition would leave them with fewer credible choices.

The Proposed Merger Would Facilitate Coordination Among the Remaining Enterprise-Grade WLAN Vendors

49. The proposed merger will also reduce competition by increasing the risk of coordination among the remaining vendors. The existing market structure of the enterprise-grade WLAN market is already conducive to coordinated behavior. A few large players dominate the industry, and information about their actions is widely known. During customer negotiations, it is common for competitors to receive bidding information about their competitors from customers in hopes of obtaining better pricing terms. WLAN vendors follow the same market analysts and seek advice from the same consultants about go-to-market strategies. Discounting practices have also become fairly standardized over time.

50. Gross margins for enterprise-grade WLAN vendors are exceedingly high, giving vendors a strong incentive to prevent competition from leading to discounts that are too deep. HPE executives are aware of the margins they earn on their WLAN solutions. When discussing unconfirmed rumors of Mist’s acquisition in 2019 before a buyer was identified, a former HPE executive expressed concern that one prospective buyer may “play the 45 too [sic] 50% gross margin game”—lower than HPE’s higher average gross margins—“and ruin the market for us all.”

51. This acquisition, if allowed to proceed, would result in two firms—Cisco and HPE—controlling over 70 percent of the relevant market, with a significant gap between HPE and the next largest vendor in the market. Cisco and HPE would cement their positions as key leaders for the market to follow, and, with fewer players and obvious leaders, Cisco and HPE may find it easier to reach and sustain a consensus on price, features, and reliability that harms enterprise customers through coordination.

NOTHING OFFSETS THE MERGER’S THREATS TO COMPETITION

52. Entry by new vendors of enterprise-grade WLAN in response to the merger would not be timely, likely, or sufficient to offset the anticompetitive effects of the proposed merger of HPE and Juniper. It takes years and significant financial investment for a vendor to design and procure hardware components for a WLAN portfolio; create a management platform that incorporates tools that streamline and automate network maintenance; build a sales and support organization; and recruit value-added resellers and other distribution partners that procure and install equipment for WLAN customers.

53. To compete effectively for larger enterprises, vendors also need name recognition and a demonstrated track record to convince them to consider switching providers. In addition, vendors may need to build a portfolio of complementary components, like campus switches, because of the increasing number of enterprise customers wishing to consolidate vendors across their networks—upwards of 50 percent according to internal Juniper documents. As one HPE executive explained, “It is a long journey to become successful in this world.”

54. Similarly, there are obstacles to existing enterprise-grade WLAN vendors repositioning or expanding to replace the competition lost from an independent Juniper. Today, only a handful of WLAN vendors are well-positioned to address the most sophisticated use cases. Several smaller WLAN vendors will continue to be disadvantaged due to small sales forces and support organizations, necessary components to developing proven reputations for reliable service that enterprise-grade customers demand. Even well-resourced networking companies in complementary networking markets are unlikely to be strong alternatives to Cisco and HPE immediately, as several face reputational headwinds and have not developed the distribution networks for rapid growth in the enterprise-grade WLAN market.

55. Defendants have claimed that the proposed acquisition would generate synergies by combining operations and removing duplication in the companies' sales, administrative, and other organizations. But HPE's own executives—and several of HPE's competitors—have expressed doubts about HPE's ability to successfully integrate Juniper's products into its networking portfolio. Regardless, to the extent the proposed transaction would result in any verifiable, merger-specific efficiencies in the relevant market, such efficiencies are unlikely to be timely or substantial enough to mitigate the risk to competition posed by the transaction.

JURISDICTION AND VENUE

56. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. § 25, as amended, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18. This Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25.

57. HPE and Juniper are engaged in interstate commerce and in activities substantially affecting interstate commerce. They sell enterprise-grade WLAN solutions throughout the United States, and their sales have had a substantial effect on interstate commerce.

58. This Court has personal jurisdiction over each Defendant. HPE and Juniper each transact business within this District. Aruba Networks, a subsidiary of HPE, is based in Santa Clara, California, and Juniper is headquartered in Sunnyvale, California.

HPE and Juniper executives responsible for managing their networking businesses live and work in the San Francisco Bay Area.

59. Venue is 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).

DIVISIONAL ASSIGNMENT

60. Pursuant to Civil Local Rule 3-2(c) and General Order No. 44, this antitrust case shall not be assigned to a particular Division of this District. Instead, it shall be assigned on a District-wide basis.

VIOLATIONS ALLEGED

61. HPE's proposed acquisition of Juniper, if allowed to proceed, would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, because the effect of it may be to substantially lessen competition in interstate trade and commerce in the market for enterprise-grade WLAN solutions in the United States for the reasons alleged above.

62. Unless enjoined, the effect of the proposed acquisition may result in the following anticompetitive effects, among others, in the relevant markets:

1. Significantly increasing concentration in an already highly concentrated market;
2. Eliminating head-to-head competition; and
3. Increasing prices paid by customers and causing a decrease in quality, service, and innovation.

REQUEST FOR RELIEF

63. The United States requests that the Court:

- (a) Adjudge and decree that HPE's proposed acquisition of Juniper would be unlawful and violate Section 7 of the Clayton Act, 15 U.S.C. § 18;
- (b) Preliminarily and permanently enjoin and restrain Defendants and all persons acting on their behalf from consummating HPE's acquisition of Juniper or from entering into or carrying out any other contract, agreement, plan, or

understanding, the effect of which would be to combine HPE and Juniper in the United States; and

(c) Award the United States the costs of this action; and award the United States other relief that the Court deems just and proper.

Dated: January 30, 2025

OMEED A. ASSEFI
Acting Assistant Attorney General

RYAN DANKS
Director of Civil Enforcement

CATHERINE K. DICK
Acting Director of Litigation

JACKLIN CHOU LEM (CA Bar #
255293)
Civil Chief
San Francisco Office

ELIZABETH S. JENSEN (CA Bar #
302355)
Assistant Civil Chief
San Francisco Office

MICHAEL J. FREEMAN (OH BAR #
0086797))
Pamela Cole (CA Bar # 208286)
Craig W. Conrath (MN Bar # 0018569)
Don Daniel (TX Bar # 24120575)
Jeremy M. Goldstein (CA Bar # 324422)
Thomas Greene (CA Bar # 57159)
Michael Mikawa (CA Bar # 316787)
Aaron M. Sheanin (CA Bar # 214472)

U.S. Department of Justice
Antitrust Division
450 Fifth Street NW, Suite 4000
Washington, DC 20530
Telephone: (212) 213-2774
Fax: (202) 514-5847
Email: Michael.Freeman@usdoj.gov

*Attorneys for Plaintiff United States of
America*

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA, *et al.*,

Case: 5:25-CV-00951-PCP

Plaintiffs,

v.

HEWLETT PACKARD
ENTERPRISE CO. and JUNIPER
NETWORKS, INC.

Defendants.

PROPOSED FINAL JUDGMENT

WHEREAS, plaintiff United States of America filed its Complaint on January 30, 2025, and whereas the United States and Defendants, Hewlett Packard Enterprise Co. and Juniper Networks, Inc., by their respective attorneys, have consented to the entry of this Final Judgment 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 regarding any issue of fact or law;

AND WHEREAS, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt divestiture of certain assets and license of certain rights by Defendants to ensure that competition is not substantially lessened;

AND WHEREAS, the United States requires that Defendants agree to undertake certain actions for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to the United States that the actions described below can and will be made;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED AND DECREED:

I. JURISDICTION

This Court has jurisdiction over the subject matter of and, for purposes of this case only, 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, as amended (15 U.S.C. § 18)

II. DEFINITIONS

As used in this Final Judgment:

- A. “AI Ops for Mist Bidder(s)” means the companies that participate in the AI Ops for Mist Source Code Auction.
- B. “Defendant(s)” means either defendant acting individually or both defendants acting collectively, as appropriate. Where the Final Judgment imposes an obligation to engage in certain conduct, that obligation shall apply where reasonable to each defendant individually, both defendants acting together, and the merged firm.
- C. “HPE” means defendant Hewlett Packard Enterprise Co., a company with its headquarters in Spring, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.
- D. “Juniper” means defendant Juniper Networks, Inc., a company with its headquarters in Sunnyvale, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. “AI Ops for Mist Licensee” means the Bidder or Bidders that meet the required criteria for the Mist AI Ops Source Code Auction and to which Defendants license the AI Ops for Mist Source Code License.

F. “AI Ops for Mist Source Code” means the source code for Juniper’s AI Ops for Mist software used in Juniper’s WLAN products.

G. “AI Ops for Mist Source Code Auction” means an auction to license the AI Ops for Mist Source Code under the terms described in Section V.

H. “AI Ops for Mist Source Code License” means the license of the AI Ops for Mist Source Code.

I. “Divestiture Acquirer” means the entity that acquires the HPE Divestiture Assets.

J. “HPE Divestiture Assets” means the HPE Instant On Business, including:

i. All tangible assets related to or used in connection with the Instant On Business, including but not limited to: personal property, hardware inventory, and other tangible property; all contracts, contractual rights, and all other agreements, commitments, and purchase orders; all licenses, permits, certifications, approvals, consents, registrations, waivers, and authorizations;

ii. All intangible assets related to or used in connection with the Instant On Business, including but not limited to: all data and information controlled by HPE for the Instant On business; R&D employees specific to the Instant On business, together with all tangible and electronic embodiments of know-how, documentation of ideas, research and development files, and other similar tangible or electronic materials specific to the Instant On business; all Instant On specific intellectual property owned, licensed, or

sublicensed (and, for shared intellectual property, a perpetual license), including the Instant On trademark (but, for the avoidance of doubt, excluding any trademarks or trade names containing the name “HPE”); a license to the version of HPE’s AOS 8 software used with Instant On; all rights to causes of action, lawsuits, judgments, claims, defenses, indemnities, guarantees, refunds, and other rights and privileges against third parties; and goodwill arising primarily out of the conduct of the Instant On business.

K. “HPE Instant On Business” means HPE’s worldwide Instant On campus and branch business.

L. “Relevant HPE Divestiture Personnel” are the individuals associated with the HPE Divestiture Business.

M. “Relevant AI Ops for Mist Personnel” are the individuals described in Paragraph V.1.B.5 of the Final Judgment.

N. “Transaction” means the acquisition of Juniper by HPE.

O. “WLAN” means wireless local area network.

III. APPLICABILITY

A. This Final Judgment applies to HPE and Juniper, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. DIVESTITURE

1. *Divestiture of the HPE Divestiture Assets*

A. Defendants are ordered and directed within one hundred and eighty (180) calendar days after the filing of this proposed Final Judgment, or five (5) days after notice of entry of this Final Judgment by the Court, whichever is later, to divest the HPE Divestiture Assets in a manner consistent with this Final Judgment to a Divestiture Acquirer

acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to extensions of this time period of up to sixty (60) days per extension, and shall notify the Court in such circumstances.

B. For all contracts, agreements, and customer relationships (or portions of such contracts, agreements, and customer relationships) included in the HPE Divestiture Assets, Defendants must assign or otherwise transfer all contracts, agreements, and customer relationships to Divestiture Acquirer within the deadlines set forth in Paragraph IV.1.A; provided, however, that for any contract or agreement that requires the consent of another party to assign or otherwise transfer, Defendants must use best efforts to accomplish the assignment or transfer. Defendants must not interfere with any negotiations between Divestiture Acquirer and a contracting party.

C. Defendants must inform any person making an inquiry relating to a possible purchase of the HPE Divestiture Assets that the HPE Divestiture Assets are being sold 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 Divestiture 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.

2. *Appointment of Divestiture Trustee*

A. If Defendants have not divested the HPE Divestiture Assets after one hundred and eighty (180) calendar days after the filing of this proposed Final Judgment (or, as provided above, as extended by additional sixty (60) day periods by the United States in its sole discretion), or five (5) days after notice of entry of this Final Judgment

by the Court, whichever is later, Defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to sell the HPE Divestiture Assets (the “Divestiture Trustee”). Defendants consent to appointment of a Divestiture Trustee prior to entry of this Final Judgment if the HPE Divestiture Assets have not been sold within the time periods provided in Paragraph IV.1.A.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the HPE Divestiture Assets. The Divestiture Trustee shall have the power and authority to sell the HPE Divestiture Assets to a Divestiture Acquirer acceptable to the United States, in its sole discretion, at a price and on terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of this Final Judgment, and will have other powers as the Court deems appropriate.

C. Subject to Paragraph IV.2.E of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the Divestiture Trustee, and that are reasonably necessary in the Divestiture Trustee’s judgment to assist in selling the HPE Divestiture Assets.

D. Defendants shall not object to a sale of the HPE Divestiture Assets by the Divestiture Trustee on any ground other than the Divestiture Trustee’s malfeasance. Any such 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 required under Section IV.3.

E. The Divestiture Trustee shall serve at the cost and expense of Defendants, on such terms and conditions as the United States approves and shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses

so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the HPE Divestiture Business based on the price and terms of the divestiture and the speed at which it is accomplished. 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 Defendants and the United States.

F. Defendants shall use their best efforts to assist the Divestiture Trustee in selling the HPE Divestiture Assets. The Divestiture Trustee and any consultants, accountants, attorneys, and other persons retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of Defendants, including any information provided to the United States during its investigation of the Transaction related to the HPE Divestiture Assets, and Defendants shall develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's sale of the HPE Divestiture Assets.

G. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and the Court setting forth the Divestiture Trustee's efforts to sell the HPE Divestiture Assets ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to purchase, expressed an interest in purchasing, entered into negotiations to purchase, or was

contacted or made an inquiry about purchasing the HPE Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to sell the HPE Divestiture Assets.

H. If the Divestiture Trustee has not sold the HPE Divestiture Assets ordered under this Final Judgment within six (6) months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to sell the HPE Divestiture Assets, (2) the reasons, in the Divestiture Trustee's judgment, why the required sale of the HPE Divestiture Assets has not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

3. *Notice of Proposed Sale of the HPE Divestiture Assets*

A. Within two (2) business days following execution of a definitive agreement to sell the HPE Divestiture Assets, Defendants or the Divestiture Trustee, whichever is then responsible for effecting the sale required herein, shall notify the United States of any such proposed sale under Section IV.1 or Section IV.2 of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed sale and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to purchase the HPE Divestiture Assets.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Divestiture Acquirer, or any other third party, or the Divestiture Trustee if applicable, additional information concerning the proposed sale, the proposed Divestiture Acquirer, and any other potential Acquirer. Defendants and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Divestiture Acquirer, any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to Defendants and the Divestiture Trustee, if there is one, stating whether or not it objects to the proposed Divestiture Acquirer or any other aspects of the proposed divestiture. 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 IV.2.D of this Final Judgment. Absent written notice that the United States does not object to the proposed Divestiture Acquirer or upon objection by the United States, a sale proposed under Section IV.1 or IV.2 shall not be consummated. Upon objection by Defendants under Paragraph IV.2.D, a sale proposed under Section IV.2 shall not be consummated unless approved by the Court.

4. *Hold Separate*

Until the sale of the HPE Divestiture Assets required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Asset Preservation and Hold Separate Stipulation and Order entered by the Court. Defendants shall take no action that would jeopardize the divestiture ordered by the Court.

V. SOFTWARE LICENSE

1. *The AI Ops for Mist Software License*

A. Defendants are ordered and directed within one hundred and eighty (180) calendar days after the filing of this proposed Final Judgment, or five (5) days after notice of entry of this Final Judgment by the Court, whichever is later, to hold the AI Ops for Mist Source Code Auction according to the criteria set forth below and, to enter into a AI Ops for Mist Source Code License in a manner consistent with this Final Judgment, to a Licensee acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to extensions of this time period of up to sixty (60) days per extension, and shall notify the Court in such circumstances.

B. The AI Ops for Mist Source Code License shall consist of a one-time, perpetual, worldwide, non-exclusive license to the AI Ops for Mist Source Code on the following basis:

1. The AI Ops for Mist Source Code License shall be irrevocable except in the case of malfeasance by the Licensee(s). Negligent or intentional breaches of the Defendants' intellectual property rights shall be construed as malfeasance for purposes of this provision.
2. The AI Ops for Mist Source Code License shall not include the right to use the Mist trademark.
3. Defendants warrant that they have the authority to license all intellectual property included in the AI Ops for Mist Source Code free and clear of any encumbrances, contractual commitments or obligations, except that for any third party software dependencies contained in the AI Ops for Mist Source Code, Defendants will (1) include a sub-license to any such software that is sublicensable and does not require either the consent of, or payment to, any such third party licensor; and (2) to the extent that any such software

requires consent of or payment to any such third party licensor, reasonably facilitate the Licensee(s)'s discussions with any other relevant third parties to obtain licenses.

4. At the option of the Licensee, Defendants will, for a period of twelve (12) months after the date of the license and on reasonable commercial terms, enter into a contract to provide transition services whereby Defendants will provide the Licensee with any knowledge transfer assistance, software updates, engineering support for ordinary course maintenance and bug fixes that it releases for the AI Ops for Mist Source Code, and engineering support for integrating the Mist AIOps source code into the Licensee's software.
5. At the option of the Licensee, Defendants will facilitate the transfer of up to thirty (30) Juniper engineers familiar with the Mist AI Ops Source Code, and up to twenty five (25) Juniper sales personnel experienced in selling Mist. Defendants will provide financial incentives to encourage relevant employees to transfer to the Licensee. The license will include a non-solicit provision preventing Licensee from soliciting any additional Juniper engineers or sales personnel beyond the agreed upon personnel, which shall lapse twelve (12) months from the date of the license. The license will also include a non-solicit provision preventing Defendants from soliciting to rehire any personnel transferred to Licensee under the license, which shall lapse 12 months after the date of the license.
6. At the option of the Licensee, Defendants will provide the Licensee with relevant contact information for and facilitate introductions to (i) Juniper's original design manufacturer ("ODM") suppliers for WLAN hardware, (ii)

Juniper's distributors for WLAN in the United States, and (iii) channel partners that work with Juniper to sell WLAN in the United States.

C. Defendants shall conduct the AI Ops for Mist Source Code Auction on the following terms:

1. Defendants will hold the AI Ops for Mist Source Code Auction to license the AI Ops for Mist Source Code.
2. Defendants will select a Licensee acceptable to the United States based on their assessment of the totality of the bid submitted by each Bidder, including but not limited to price.
3. Defendants will negotiate a definitive license agreement with the selected Licensee within 180 days of entry of this proposed Final Judgment.
4. In the event that more than one bid is received that exceeds \$8 million, Defendants will license the AI Ops for Mist Source Code to a second Licensee acceptable to the DOJ on the following basis:
 - If only two bids are received that exceed \$8 million, Defendants will also license the AI Ops for Mist Source code, excluding the transitional services and employees described in Paragraphs V.1.B.4, V.1.B.5 and V.1.B.6 of this proposed Final Judgment, to the second-place Licensee at the price contained in that Licensee's bid.
 - If three or more bids are received that exceed \$8 million, Defendants will hold a secondary auction to license the AI Ops for Mist Source Code, excluding the transitional services and employees described in Paragraphs V.1.B.4, V.1.B.5 and V.1.B.6 of this proposed Final Judgment, to either the second- or third-place bidder in the primary auction, in which case the secondary

auction will have a reserve price set at the license fee paid by the winning bidder of the primary auction.

D. Provided one or more Licensee(s) emerges as the winning bidder at the auction as set forth in Section V.1.C or Section V.2:

1. The Licensee(s) shall have the right to utilize the AI Ops for Mist Source Code for its networking products.
2. The Licensee(s) shall have the right to further develop and innovate the AI Ops for Mist Source Code, and any improvements to and derivatives of the AI Ops for Mist Source Code developed after the license date by the Licensee will be owned by the Licensee.
3. The Licensee(s) shall have the right to grant rights of use to the AI Ops for Mist Source Code to its end users, intermediaries, and service providers as reasonably needed in connection with the sale of its networking products.
4. Defendants and Licensee(s) will provide patent cross-licenses to enable the parties' activities within WLAN.

2. *Appointment for AI Ops for Mist License Trustee*

A. If Defendants have not licensed the AI Ops for Mist Source Code to a Licensee(s) after one hundred and eighty (180) calendar days after the filing of this proposed Final Judgment (or, as provided above, as extended by additional sixty (60) day periods by the United States in its sole discretion), or five (5) days after notice of entry of this Final Judgment by the Court, whichever is later, Defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to conduct the AI Ops for Mist Source Code Auction and license the AI Ops for Mist Source Code in a

manner consistent with this Final Judgment (the “License Trustee”). Defendants consent to appointment of a License Trustee prior to entry of this Final Judgment if the AI Ops for Mist Source Code Auction and license of the AI Ops for Mist Source Code have not been completed within the time periods provided in Paragraph V.1.A.

B. After the appointment of a License Trustee becomes effective, only the License Trustee shall have the right to conduct the AI Ops for Mist Source Code Auction and license the AI Ops for Mist Source Code. The License Trustee shall have the power and authority to conduct the AI Ops for Mist Source Code Auction and to license the AI Ops for Mist Source Code to a Licensee(s) acceptable to the United States, in its sole discretion, at a price and on terms as are then obtainable upon reasonable effort by the License Trustee, subject to the provisions of this Final Judgment, and will have other powers as the Court deems appropriate.

C. Subject to Paragraph V.2.E of this Final Judgment, the License Trustee may hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the License Trustee, and that are reasonably necessary in the License Trustee’s judgment to assist in the AI Ops for Mist Source Code Auction and in licensing the AI Ops for Mist Source Code.

D. Defendants shall not object to a License by the License Trustee on any ground other than the License Trustee’s malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the License Trustee within ten (10) calendar days after the License Trustee has provided the notice required under Section V.3.

E. The License Trustee shall serve at the cost and expense of Defendants, on such terms and conditions as the United States approves and shall account for all monies derived from the sale of the assets sold by the License Trustee and all costs and expenses so incurred. After approval by the Court of the License Trustee’s accounting, including fees for

its services and those of any professionals and agents retained by the License Trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the License Trustee and any professionals and agents retained by the License Trustee shall be reasonable in light of the value of the AI Ops for Mist Source Code License and based on the price and terms of the license and the speed at which it is accomplished. Within three (3) business days of hiring an agent or consultant, the License Trustee must provide written notice of the hiring and rate of compensation to Defendants and the United States.

F. Defendants shall use their best efforts to assist the License Trustee in accomplishing the required AI Ops for Mist Source Code Auction and in licensing the AI Ops for Mist Source Code. The License Trustee and any consultants, accountants, attorneys, and other persons retained by the License Trustee shall have full and complete access to the personnel, books, records, and facilities of Defendants, including any information provided to the United States during its investigation of the Transaction related to the AI Ops for Mist Source Code, and Defendants shall develop financial and other information relevant to such business as the License Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the License Trustee's accomplishment of the AI Ops for Mist Source Code Auction or AI Ops for Mist Source Code License.

G. After its appointment, the License Trustee shall file monthly reports with the United States and the Court setting forth the License Trustee's efforts to conduct the AI Ops for Mist Source Code Auction and license the AI Ops for Mist Source Code ordered under this Final Judgment. To the extent such reports contain information that the License Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who,

during the preceding month, made an offer to license, expressed an interest in licensing, entered into negotiations to license, or was contacted or made an inquiry about licensing the AI Ops for Mist Source Code, and shall describe in detail each contact with any such person. The License Trustee shall maintain full records of all efforts made to conduct the AI Ops for Mist Source Code Auction or license the AI Ops for Mist Source Code.

H. If the License Trustee has not entered into the license ordered under this Final Judgment within six (6) months after its appointment, the License Trustee shall promptly file with the Court a report setting forth (1) the License Trustee's efforts to accomplish the required AI Ops for Mist Source Code Auction and AI Ops for Mist Source Code License, (2) the reasons, in the License Trustee's judgment, why the required AI Ops for Mist Source Code Auction and AI Ops for Mist Source Code License has not been accomplished, and (3) the License Trustee's recommendations. To the extent such reports contain information that the License Trustee deems confidential, such reports shall not be filed in the public docket of the Court. The License Trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the License Trustee's appointment by a period requested by the United States.

3. *Notice of Proposed AI Ops for Mist License*

A. Within two (2) business days following execution of a definitive agreement to license the AI Ops for Mist Source Code, Defendants or the License Trustee, whichever is then responsible for effecting the license required herein, shall notify the United States of any such proposed license under Section V.1 or Section V.2 of this Final Judgment. If the License Trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed license and list the

name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to license the AI Ops for Mist Source Code.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Licensee(s), or any other third party, or the License Trustee if applicable, additional information concerning the proposed license, the proposed Licensee(s), and any other potential Licensee(s). Defendants and the License Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Licensee(s), any third party, and the License Trustee, whichever is later, the United States shall provide written notice to Defendants and the License Trustee, if there is one, stating whether or not it objects to the proposed license. If the United States provides written notice that it does not object, the license may be consummated, subject only to Defendants' limited right to object to the sale under Paragraph V.2.D of this Final Judgment. Absent written notice that the United States does not object to the proposed Licensee(s) or upon objection by the United States, a license proposed under Section V.1 or Section V.2 shall not be consummated. Upon objection by Defendants under Paragraph V.2.D, a license proposed under Section V.2 shall not be consummated unless approved by the Court.

4. *Preservation of AI Ops for Mist Assets*

Until the license required by this Final Judgment has been accomplished:

A. Defendants shall provide sufficient working capital and lines and sources of credit to continue to maintain the AI Ops for Mist Source Code as an economically viable asset.

B. Defendants shall not remove, sell, lease, assign, transfer, pledge, exclusively license, or otherwise dispose of the AI Ops for Mist Source Code.

C. Defendants shall take no action that would interfere with the ability of any License Trustee appointed pursuant to the Final Judgment to conduct the AI Ops for Mist Source Code Auction or complete the license of the AI Ops for Mist Source Code.

VI. AFFIDAVITS

A. Within twenty (20) calendar days of the filing of the proposed Final Judgment in this matter, and every thirty (30) calendar days thereafter until both the HPE Divestiture Assets have been divested under Section IV and completion of the AI Ops for Mist Source Code Auction and any license of the AI Ops for Mist Source Code under Section V, Defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Sections IV and V of this Final Judgment. Each such affidavit shall include a description of the efforts Defendants have taken to sell the HPE Divestiture Assets and conduct the AI Ops for Mist Source Code Auction, as applicable. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Defendants shall keep all records of all efforts made to preserve and sell the HPE Divestiture Assets until one year after such sale has been completed and shall keep records of all efforts made to preserve and license the AI Ops for Mist Source Code until one year after such license has been completed.

VIII. COMPLIANCE INSPECTION

A. For purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States, including consultants and other persons retained by the

United States shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

1. access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy or 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, regarding such matters. The interviews shall 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 in charge of the Antitrust Division, Defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested. Written reports authorized under this paragraph may, at the sole discretion of the United States, require Defendants to conduct, at Defendants' cost, an independent audit or analysis relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained by the means provided in this section shall 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 any Plaintiff is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to 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,” then the United States shall give Defendants ten (10) calendar days’ notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

IX. NOTIFICATION

For purposes of this Final Judgment, any notice or other communication required to be provided to the United States shall be sent to the person at the address and emails set forth below (or such other addresses as the United States may specify in writing to Defendants):

United States

Jacklin Lem
Civil Chief, San Francisco Office
U.S. Department of Justice, Antitrust Division
450 Golden Gate Ave, Room 10-0101
San Francisco, CA 94102
Jacklin.Lem@usdoj.gov

X. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this 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.

XI. EXPIRATION OF FINAL JUDGMENT

Unless the Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XII. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest.

Date: _____
Court approval subject to procedures of the
Antitrust Procedures and Penalties Act, 15 U.S.C. §
16.

Hon. P. Casey Pitts
United States District Judge

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

HEWLETT PACKARD ENTERPRISE
CO. and JUNIPER NETWORKS, INC.

Defendants.

Case: 5:25-CV-00951-PCP

COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America (“United States”), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (“APPA” or “Tunney Act”), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the Proposed Final Judgment submitted for entry in this civil antitrust proceeding. Unless otherwise noted, all defined terms in this Competitive Impact Statement have the same meaning as set out in the proposed Final Judgment.

I. NATURE AND PURPOSE OF THIS PROCEEDING

On January 9, 2024, Hewlett Packard Enterprise Co. (“HPE”) entered into an agreement to acquire Juniper Networks, Inc. (“Juniper”) for approximately \$14 billion.³

The United States filed a civil antitrust Complaint on January 30, 2025, seeking to enjoin the proposed acquisition. The Complaint alleges that the acquisition likely would substantially lessen competition in the United States for enterprise-grade WLAN solutions in violation of Section 7 of the Clayton Act, § 15 U.S.C. § 18.

On June 27, 2025, the United States filed a Stipulation and Order and proposed Final Judgment designed to remedy the Section 7 violation, eliminating the alleged

³ Each of HPE and Juniper are referred to in this document as “Defendant” or collectively as “Defendants,” as appropriate.

anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, Defendants are required to divest HPE's Instant On campus and branch business (the "HPE Divestiture Business") to a Divestiture Acquirer and license the source code for Juniper's Mist AI Ops software used in Juniper's WLAN products (the "AI Ops for Mist Source Code License") to one or more Licensees approved by the DOJ. The Divestiture Acquirer of the HPE Divestiture Business and the Licensee(s) of the AI Ops for Mist Source Code License could be the same entity or two separate entities. At the option of the first Licensee, for twelve (12) months following the license, defendants must also provide transitional technical support relating to the license. At the option of the first Licensee, Defendants must also transfer engineers and sales employees familiar with the Mist AI Ops software to assist the Licensee in incorporating the Mist software into its WLAN offerings and marketing it to customers, and to facilitate introductions to Juniper's suppliers, distributors and channel partners.

Under the terms of the Stipulation and Order, the Defendants may consummate the proposed acquisition following signature by the Court of the Stipulation and Order and will for the pendency of the license processes. Under the terms of the Stipulation and Order, Defendants will take certain steps to ensure that the HPE Divestiture Business is operated as a competitively independent, economically viable, and ongoing business concern that will remain independent and uninfluenced by the consummation of the acquisition, and that competition is maintained during the pendency of the ordered divestiture.

The United States and the Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. THE DEFENDANTS AND THE PROPOSED TRANSACTION

Complete descriptions of the Defendants and the proposed transaction are found in the Complaint, filed January 30, 2025. Defendant HPE, headquartered in Spring, Texas, provides products in a number of technology markets, including general-purpose servers, cloud storage, and finance. Networking is one of its fastest growing divisions, and the company sells various networking products, including wireless access points and campus switches, under the HPE Aruba Networking brand and its legacy on-premises network management solution, Airwave.

Juniper, headquartered in Sunnyvale, California, offers a range of networking products, including wireless access points, wired switches, and network management software under the Mist brand.

On January 9, 2024, Hewlett Packard Enterprise Co. (“HPE”) entered into an agreement to acquire Juniper Networks, Inc. (“Juniper”) for approximately \$14 billion.

B. THE MARKET

a. ENTERPRISE-GRADE WLAN SOLUTIONS

Enterprise-grade WLAN solutions are a relevant product market and line of commerce within the meaning of Section 7 of the Clayton Act. Enterprise-grade WLAN solutions are sold to businesses, school systems, and other commercial and non-profit organizations. They can serve a large number of users simultaneously and support advanced feature sets and functionalities. Unlike consumer-grade WLAN, enterprise-grade WLAN solutions include systems to manage multiple access points—sometimes thousands of them—across a single location. Systems used to manage multiple access points include hardware-based controllers, cloud-managed services, and network management software. Those systems monitor connectivity, service quality, and other critical network functions.

WLAN vendors offer products with a range of hardware and software features optimized for different environments and customer needs. Because customer needs differ, HPE and Juniper may be able to charge different prices and include different terms for their customers. Customers are also unable to engage in arbitrage by purchasing indirectly from or through other customers to defeat potential price increases or worsening of terms.

The market for enterprise-grade WLAN solutions exhibits many of the “practical indicia” that courts look for when determining the boundaries of a relevant market, including peculiar characteristics and uses, distinct customers, and industry recognition. For example:

- WLAN solutions use radio waves to connect users’ devices to a local area network. Consumers do not view wired solutions, which connect user devices directly to campus switches through ethernet cables, as reasonable substitutes, even though both permit users to access the network, because wired connections do not permit users freedom of movement.
- Customers who purchase enterprise-grade WLAN solutions, which are tailored for commercial environments, with wireless access points designed to be linked to cover a larger geographic area and managed by a hardware or software system, are not generally able to be served by consumer-grade WLAN solutions.
- Customers typically purchase network management software and other control systems along with wireless access points. This is because wireless access points sold by Cisco, HPE, Juniper, and other WLAN vendors often cannot be managed by third-party network management software, and these firms generally do not sell their network management software on a standalone basis to be used with third-party hardware.

- Industry analysts, including 650 Group Market Intelligence Research (“650 Group”), regularly track revenue growth for an enterprise-grade WLAN market and calculate various vendors’ shares of that market. Those analysts separately track revenues for enterprise-grade and consumer-grade WLAN, and, for enterprise-grade WLAN, include revenues from wireless access points, controllers, and cloud-managed services. Defendants regularly circulate market share estimates produced by 650 Group and other industry analysts and rely on them to gauge their performance relative to competitors.

Purchasing wireless access points from an original device manufacturer and either using a third-party network management software or creating a bespoke software solution in-house is not a reasonable substitute for most enterprise-grade WLAN customers. Among other things, few WLAN customers have the IT resources and expertise to design and procure their own access points and network management systems or the scale needed to make buying directly cost-effective. Customers would not substitute solutions involving third-party or bespoke software in sufficient numbers to deter a hypothetical monopolist of enterprise-grade WLAN solutions from undertaking a small but significant non-transitory increase in price (“SSNIP”).

b. GEOGRAPHIC MARKET

The relevant geographic market for HPE’s proposed acquisition of Juniper is the United States. Several enterprise-grade WLAN vendors that are active abroad, including Chinese multinational Huawei Technologies Company (“Huawei”), have been identified as potential security threats by the U.S. government and, under federal law, are barred from competing for business domestically. As a result, customers in the United States have fewer options than they would if they were based abroad, and HPE and Juniper may be able to charge different prices and include different terms for those customers. Customers in the United States are also unable to engage in arbitrage by purchasing

indirectly from or through other customers outside the United States in order to defeat potential price increases or worsening of terms. The geographic market includes all sales made to customers in the United States, regardless of the WLAN vendor's location.

C. THE COMPETITIVE EFFECTS OF THE TRANSACTION

Complete descriptions of the potential effects on competition in the market for enterprise-grade WLAN solutions in the United States are found in the Complaint. In the United States, the market for the development and sale of enterprise-grade WLAN solutions is highly concentrated and would become substantially more concentrated as a result of the Proposed Transaction.

Defendants regularly rely on industry analysts, including International Data Corporation (“IDC”), that calculate wireless access point market shares for the United States. Per IDC and as alleged in the Complaint, in 2024, HPE had a share of approximately 15-17% and Juniper had a share of approximately 7-9%. Cisco had approximately 48% of the market, such that post-acquisition these three firms would hold over 70% of the market. Other competitors, including Arista Networks, Inc.; Fortinet, Inc.; Ubiquiti Inc.; Commscope Holding Company Inc.; Extreme Networks, Inc.; Nile Global, Inc.; and Meter, Inc., each had a share between 1% and 10%. Although the combined share of HPE and Juniper is below 30%, the acquisition would result in a highly concentrated market as measured by the Herfindahl-Hirschman Index (“HHI”) as described in Section 2.1 of the 2023 *Merger Guidelines*, with a pre-merger HHI over 3,000 and a change of at least 250 points.

The proposed acquisition would create a combined company with the ability to increase prices by eliminating head to head competition between HPE and Juniper and harm those customers that view Cisco, HPE, and Juniper as the three leading vendors

for enterprise-grade WLAN solutions and benefit from having Juniper as a credible alternative to Cisco and HPE in this market.

The proposed acquisition would also reduce competition by increasing the risk of coordination among the remaining vendors. It would result in two firms—Cisco and HPE—controlling over 70 percent of the relevant market, with a significant gap between HPE and the next largest vendor in the market. Cisco and HPE may find it easier to reach and sustain a consensus on price, features, and reliability that harms enterprise customers through coordination.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestiture and license and other remedial measures of the proposed Final Judgment will eliminate the alleged anticompetitive effects of the acquisition by strengthening one or more existing competitors or facilitating entry of a new competitor for enterprise-grade WLAN solutions in the United States.

Divestiture of HPE Instant On Business

The proposed Final Judgment requires Defendants within one hundred and eighty (180) calendar days after the filing of this proposed Final Judgement, or five (5) days after notice of entry of this Final Judgment by the Court, whichever is later to divest HPE’s worldwide Instant On campus and branch business (the “HPE Divestiture Business”), including all tangible and intangible assets related to or used in connection with the Instant On Business. The divestiture will include all contracts, agreements, and customer relationships included in the HPE Divestiture Assets, and for any such contract or agreement that requires the consent of another party to assign or otherwise transfer, Defendants must use best efforts to accomplish the assignment or transfer.

In the event that Defendants do not divest the HPE Divestiture Business, within the periods prescribed in the proposed Final Judgment, the proposed Final Judgment provides that the Court will appoint a Divestiture Trustee selected by the United States

to sell the HPE Divestiture Business. If a Divestiture Trustee is appointed, the proposed Final Judgment provides that Defendants will pay all costs and expenses of the Divestiture Trustee. The Divestiture Trustee's commission will be structured so as to provide an incentive for the Divestiture Trustee based on the price and terms of the divestiture and the speed with which it is accomplished. After its appointment becomes effective, the Divestiture Trustee will file monthly reports with the Court and the United States setting forth its efforts to sell the HPE Divestiture Business. At the end of six (6) months, if the divestiture has not been accomplished, the Divestiture Trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the Divestiture Trustee's appointment.

AI Ops for Mist Source Code License

The proposed Final Judgment also requires Defendants, within one hundred and eighty (180) calendar days after the filing of this proposed Final Judgement, or five (5) days after notice of entry of this Final Judgment by the Court, whichever is later, to hold an auction to license the AI Ops for Mist Source Code and enter into a binding agreement to license the AI Ops for Mist Source Code. The AI Ops for Mist Source Code must be licensed in such a way as to satisfy the United States, in its sole discretion, that the operations can and will be operated by the Licensee as a viable, ongoing business that can compete effectively in the relevant market. Defendants must take all reasonable steps necessary to accomplish the AI Ops for Mist Source Code Auction and AI Ops for Mist Source Code License quickly and shall cooperate with prospective licensees. The United States, in its sole discretion, may agree to extensions of this time period of up to sixty (60) days to complete the divestiture and shall notify the Court in such circumstances. If Defendants receive multiple bids over \$8 million for the AI Ops for Mist Source Code, Defendants will also license the technology to a second Licensee

(without technical support, the transfer of employees, or introduction to Juniper's suppliers, distributors, and channel partners), giving not one but two competitors access to this technology. Whether to a single or to two bidders, the AI Ops for Mist License will consist of a one-time, perpetual, worldwide, non-exclusive license for the AI Ops for Mist Source Code. For the primary Licensee, Defendants must also provide, at the Licensee's option, a transition services agreements for a period of twelve (12) months whereby Defendants will provide the Licensee with any knowledge transfer assistance, software updates, engineering support for ordinary course maintenance and bug fixes that it releases for the AI Ops for Mist Source Code, and engineering support for integrating the AI Ops for Mist Source Code into the Licensee's software.

Per the terms of the license, the Licensee will have the right to use the AI Ops for Mist Source Code and further develop and improve it, with the Licensee retaining ownership of any improvements to and derivatives of the AI Ops for Mist Source Code developed after the license date. The Licensee will have the right to grant rights of use to the AI Ops for Mist Source Code to its end users, intermediaries, and service providers as reasonably needed in connection with the sale of networking products. Defendants and Licensee will provide patent cross-licenses to enable the parties' networking activities.

In addition, the Final Judgment provides that Defendants, at the primary Licensee's option, will facilitate the transfer of up to thirty (30) Juniper engineers familiar with the Mist AI Ops Source Code, and up to twenty five (25) Juniper sales personnel experienced in selling Mist to the primary Licensee. Defendants will provide financial incentives to encourage relevant employees to transfer to the Licensee. The license will include a non-solicit provision preventing primary Licensee from soliciting any additional Juniper engineers or sales personnel beyond the agreed upon personnel, which shall lapse twelve (12) months from the date of the license. The license will also include a non-solicit provision preventing Defendants from soliciting to hire any personnel transferred to

primary Licensee under the license, which shall lapse (12) months after the date of the license. These provisions will ensure that the Licensee has personnel knowledgeable about the Mist AIOps software to assist the Licensee in incorporating this technology into its own network management software and in marketing that offering to clients.

The transition services agreement will include a provision whereby Defendants will provide the primary Licensee with relevant contact information for and introductions to Juniper's original design manufacturer ("ODM") suppliers for WLAN hardware and Juniper's distributors and channel partners that work with Juniper to sell WLAN in the United States.

In the event that Defendants do not license the AI Ops for Mist Source Code to a Licensee within the periods prescribed in the proposed Final Judgment, the proposed Final Judgment provides that the Court will appoint a License Trustee selected by the United States to effect the AI Ops for Mist Source Code Auction and license the AI Ops for Mist Source Code. If a License Trustee is appointed, the proposed Final Judgment provides that Defendants will pay all costs and expenses of the License Trustee. The License Trustee's commission will be structured so as to provide an incentive for the License Trustee based on the price and terms of the license and the speed with which it is accomplished. After its appointment becomes effective, the License Trustee will file monthly reports with the Court and the United States setting forth its efforts to accomplish the AI Ops for Mist Source Code Auction and AI Ops for Mist Source Code License. At the end of six (6) months, if the AI Ops for Mist Source Code Auction and AI Ops for Mist Source Code License has not been accomplished, the License Trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the License Trustee's appointment.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

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 will neither impair nor assist 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 the Defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and the 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 sixty (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 sixty (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 United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the Federal Register.

Written comments should be submitted to:

Civil Chief, San Francisco Office
U.S. Department of Justice, Antitrust Division
450 Golden Gate Ave, Room 10-0101
San Francisco, CA 94102

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

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against the Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against HPE's acquisition of Juniper. The United States is satisfied, however, that the divestiture of assets, license, and other relief described in the proposed Final Judgment will preserve competition for the development and sale of enterprise-grade WLAN solutions in the United States. The proposed Final Judgment would achieve 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 of the Complaint.

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 mechanisms 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 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 also 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 the 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 consonant 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).⁴

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.

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/s/ Chad Mizelle
CHAD MIZELLE
Acting Associate Attorney General

/s/ Stanley Woodward
STANLEY WOODWARD
Counselor to the Attorney General

/s/ Ketan Bhirud
KETAN BHIRUD
Associate Deputy Attorney General

/s/ Abigail A. Slater
ABIGAIL A. SLATER
Assistant Attorney General

ROGER P. ALFORD
Principal Deputy Assistant Attorney General

⁴ The 2004 amendments substituted “shall” for “may” in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. Compare 15 U.S.C. § 16(e) (2004), with 15 U.S.C. § 16(e)(1) (2006); see also SBC Commc’ns, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments “effected minimal changes” to Tunney Act review).

OMEED ASSEFI
MARK HAMER
WILLIAM J. RINNER
Deputy Assistant Attorneys General

U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue N.W.
Washington, DC 20530
Tel.: 202-616-1473

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