waiting period has expired.[1] The purpose of the notification and waiting period is to allow the agencies an opportunity to conduct an antitrust review of proposed transactions before they are consummated.

The Complaint alleges that Blavatnik, via an entity he controls, acquired voting securities of TangoMe in excess of the statutory threshold ($75.9 million at the time of acquisition) without making the required pre-acquisition filings with the agencies and without observing the waiting period, and that Blatvatnik and TangoMe each met the statutory size of person threshold at the time of the acquisition (Blavatnik and TangoMe had sales or assets in excess of $151.7 million and $15.2 million, respectively).

The Complaint further alleges that Blavatnik previously violated the HSR Act's notification requirements when he acquired shares in LyondellBasell Industries N.V. ("LyondellBasell") in 2010. In August and September of 2010, Blavatnik made several acquisitions of LyondellBasell voting securities without making appropriate HSR filings and observing the required waiting periods. On December 1, 2010, Blavatnik made a corrective filing for these acquisitions. In a letter accompanying the corrective filing, Blavatnik acknowledged that these transactions were reportable under the HSR Act, but asserted that the failure to file and observe the waiting period was inadvertent. Blavatnik also committed that he would consult with HSR counsel before making any additional acquisitions of voting securities. On January 4, 2011, the Premerger Notification Office of the Federal Trade Commission sent a letter to Blavatnik indicating that it would not recommend a civil penalty action regarding the

[1] 15 U.S.C. § 18a(a).

2010 LyondellBasell acquisition, but stated that Blavatnik would be “accountable for instituting

On August 6, 2014, Blavatnik, through Access, acquired shares of TangoMe voting securities. Blavatnik's voting securities represented approximately 29.1% of TangoMe's outstanding voting securities and were valued at approximately $228 million. This exceeded the HSR Act's $75.9 million size-of-transaction threshold then in effect.

Prior to acquiring the TangoMe voting securities, neither Access nor Blavatnik conducted any HSR review of the proposed acquisition or consulted with HSR counsel, notwithstanding Blavatnik's commitments made in connection with the 2010 LyondellBasell corrective filing. Blavatnik became aware of the missed HSR filing when Access conducted a periodic review of the company-wide holdings of TangoMe. After discovering the missed filing, Blavatnik promptly made a corrective filing on December 17, 2014. The waiting period expired on January 16, 2015.

B. Blavatnik's Violation of HSR

As alleged in the Complaint, Blavatnik acquired in excess of the $75.9 million in voting securities of TangoMe without complying with the pre-acquisition notification and waiting period requirements of the HSR Act. Blavatnik's failure to comply undermined the statutory scheme and the purpose of the HSR Act. Blavatnik's December 17, 2014, corrective filing included a letter acknowledging that the acquisitions were reportable under the HSR Act.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment imposes a $656,000 civil penalty designed to deter this Defendant and others from violating the HSR Act. The United States adjusted the penalty downward from the maximum because the violation was unintentional, the Defendant promptly self-reported the violation after discovery, and the Defendant is willing to resolve the matter by consent decree and avoid prolonged investigation and litigation. The penalty also reflects

Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the *Federal Register*. Written comments should be submitted to:

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Washington, DC 20580
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The proposed Final Judgment provides that this Court retains jurisdiction over this action, and the parties may apply to this Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

As an alternative to the proposed Final Judgment, the United States considered pursuing a full trial on the merits against the Defendant. The United States is satisfied, however, that the proposed relief is an appropriate remedy in this matter. Given the facts of this case, including the Defendant's self-reporting of the violation and willingness to settle quickly, the United States is satisfied that the proposed civil penalty is sufficient to address the violation alleged in the Complaint and to deter violations by similarly situated entities in the future, without the time, expense, and uncertainty of a full trial on the merits.

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

The APPA requires that remedies contained in proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (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); *see generally United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v, U.S. Airways Group,*

(noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (noting that room must be made for the government to grant concessions in the negotiation process for settlements (citing *Microsoft*, 56 F.3d at 1461)); *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would

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. As this Court recently confiriTf (C)4 Tw [(r)86(r 1r)5(0 Tw 0 -2.3 T8

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.

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.

Date: April 20, 2016

Respectfully Submitted,

/s/ Kenneth A. Libby
Kenneth A. Libby
Special Attorney

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discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93-298, at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").