UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA Plaintiff, v. JAMES L. DOLAN Defendant	Civil Action No.

COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 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.

I. NATURE AND PURPOSE OF THE PROCEEDING

On December 6, 2018, the United States filed a Complaint against Defendant James L. Dolan ("Dolan"), related to Dolan's acquisitions of voting securities of the Madison Square Garden Company ("MSG") in September 2017. The Complaint alleges that Do.001 23sin"). The HSR Act pro

> shall acquire, directly or indirectly, any voting securities of any person" exceeding ce
> thresholds until that person has filed pre-acquisition notification and report forms with the
> Department of Justice and the Federal Trade Commission (collectively, the "federal a
> agencies" or "agencies") and the post-filing waiting period has expired. 15 U.S.C. § 18a(a)

key purpose of the notification and waiting period requirements is to protect consumers and competition from potentially anticompetitive transactions by providing the agencies an opportunity to conduct an antitrust review of proposed transactions before they are consummated.

The Complaint alleges that Dolan acquired voting securities of MSG in excess of then-applicable statutory threshold ($161.5 million at the time of acquisition) without making the required pre-acquisition HSR Act filings with the agencies and without observing the waiting period, and that Dolan and MSG met the applicable statutory size of person thresholds.

At the same time the Complaint was filed in the present action, the United States also filed a Stipulation and proposed Final Judgment that eliminates the need for a trial in this case. The proposed Final Judgment is designed to address the violation alleged in the Complaint and deter Dolan's HSR Act violations. Under the proposed Final Judgment, Dolan must pay a civil penalty to the United States in the amount of $609,810.

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

In his roles as Executive Chairman and Director of MSG, Dolan frequently receives restricted stock units ("RSUs") as a part of his compensation package. On August 16, 2016, due to the imminent vesting of RSUs, Dolan made an HSR filing for an acquisition of MSG voting securities that would result in holdings exceeding the adjusted $50 million threshold then in effect. The Premerger Notification Office granted early termination on this filing on September 6, 2016, and Dolan completed the acquisition three days later. For a period of five years, Dolan was permitted under the HSR Act to acquire additional voting securities of MSG without making another HSR Act filing so long as he did not exceed the $100 million threshold, as adjusted. As of February 27, 2017, the adjusted $100 million threshold was $161.5 million.

On September 11, 2017, Dolan acquired 591 shares of MSG due to vesting RSUs. As a result of this acquisition, Dolan held voting securities of MSG valued in excess of the $161.5 million threshold then in effect. Although he was required to do so, Dolan did not file under the HSR Act or observe the HSR Act's waiting period prior to completing the September 11, 2017, transaction.

Dolan made a corrective HSR Act filing on November 27, 2017, after learning that this acquisition was subject to the HSR Act's requirements and that he was obligated to file. The waiting period for that corrective filing expired on December 26, 2017.

The Complaint further alleges that Dolan's September 2017 HSR Act violation was not the first time Dolan had failed to observe the HSR Act's notification and waiting period requirements. On March 10, 2010, Dolan acquired voting securities of Cablevision Systems Corporation ("CVC") that resulted in holdings exceeding the adjusted $50 million threshold then in effect under the HSR Act. Although he was required to do so, Dolan did not file under the HSR Act prior to acquiring CVC voting securities on March 10, 2010. Subsequently, Dolan

made additional acquisitions of CVC voting securities such that on November 30, 2010 his holdings exceeded the adjusted $100 million threshold then in effect under the HSR Act. Although he was required to do so, Dolan did not file under the HSR Act prior to making the acquisition of CVC voting securities on November 30, 2010. On February 24, 2012, Dolan made a corrective filing under the HSR Act for the acquisitions of CVC voting securities, and explained in a letter accompanying the corrective filing that his failure to file was inadvertent. On May 4, 2012, the Premerger Notification Office of the Federal Trade Commission notified Dolan by letter that it would not recommend a civil penalty for the violation, but advised Dolan that he was "accountable for instituting an effective program to ensure full compliance with the Act's requirements."

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment imposes a $609,810 civil penalty designed to address the violation alleged in the Complaint and deter the Defendant and others from violating the HSR Act. The United States adjusted the penalty downward from the maximum permitted under the HSR Act because the violation was inadvertent, 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 relief will have a beneficial effect on competition because the agencies will be properly notified of future acquisitions, in accordance with the law. At the same time, the penalty will not have any adverse effect on competition.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

There is no private antitrust action for HSR Act violations; therefore, entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust action.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and the Defendant 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:

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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.

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.

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evaluation of what relief would best serve the public." United States v. BNS, Inc., 858 F.2d 456, 462 (9th Cir. 1988) (quoting United States v. Bechtel Corp., 648 F.2d 660, 666 (9th Cir. 1981)); see also Microsoft, 56 F.3d at 1460-62; United States v. Alcoa, Inc., 152 F. Supp. 2d 37, 40 (D.D.C. 2001); InBev, 2009 U.S. Dist. LEXIS 84787, at *3. Instead:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[11]

In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." SBC Commc'ns, 489 F. Supp. 2d at 17; see also U.S. Airways, 38 F. Supp. 3d at 74-75 (noting that a court should not reject the proposed remedies because it believes others are preferable and that room must be made for the government to grant concessions in the negotiation process for settlements); Microsoft, 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); United States v. Daniels

remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the ‘reaches of the public interest.’”

In its 2004 amendments,[2] Congress

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: December 6, 2018

Respectfully submitted,

/s/ Kenneth A. Libby
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