Dated: November 4, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–28278 Filed 11–10–03; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF JUSTICE

## Antitrust Division

## United States v. General Electric Company & Instrumentarium OYJ

### 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, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for that District of Columbia in *United States* v. *General Electric Co.,* Civil Action No. 03CV01923. On September 16, 2003, the United States filed a Complaint alleging that the proposed acquisition of Instrumentarium OYJ (''Instrumentarium'') by General Electric Company (''GE'') is in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires the defendants to fully divest Instrumentarium's Spacelabs business, which is its primary manufacturing, distribution, research and development and sales operation for critical care monitors; and Instrumentarium's Ziehm business, which comprises Instrumentarium's C-arm business. Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC, Room 200, 325 Seventh Street, NW., on the Internet at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the Untied States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001.

Public comment is invited within 6o days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to James R. Wade, Chief, Litigation III Section, Antitrust Division, Department of Justice, 325 Seventh Street, NW., Suite 300, Washington, DC 20530 (telephone: (202) 616–5935).

**J. Robert Kramer II,**

*Director of Operations, Antitrust Division.*

### Final Judgment

*Whereas,* plaintiff, United States of America, filed its Complaint on September 16, 2003, plaintiff and defendants, General Electric Company (''GE'') and Instrumentarium OYJ (''Instrumentarium''), 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 and certain divestiture of certain rights or assets by the defendants to assure that competition is not substantially lessened;

*And whereas,* plaintiff requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

*And whereas,* defendants have represented to the United States that the divestitures required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

*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 each of the parties of 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. ''GE'' means defendant General Electric Company, a New York corporation with its headquarters in Fairfield, Connecticut, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. ''Instrumentarium'' means defendant Instrumentarium OYJ, a public limited-liability company existing under the laws of Finland, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Patient monitors'' means multiparameter medical devices that provide continuous, real-time evaluations of patient vital signs.

D. ''C-arms'' means full-size, mobile fluorscopic x-ray machines that are used to provide continuous, real-time viewing of patients during various medical procedures.

E. ''Spacelabs'' means the Spacelabs business as described in schedule 1, including Annexes 1–4, of the Commitments that GE has entered into with the European Commission regarding divestiture of Spacelabs, approved on September 2, 2003, and attached as Exhibit 1 (motion pending to file under seal). A non-confidential version of Schedule 1 is attached as Exhibit 2. Provided, however, that the Acquirer of Spacelabs shall grant GE a license to technology embodied in the Instrumentarium Medical Connector, the terms and duration of such license to be negotiated between GE and the Acquirer, limited to the field of use of nine-pin connectors for patient monitoring equipment, including, but not limited to, any patent issuing on the patent application currently entitled ''Latching Medical Patient Parameter Safety Connector and Method'' submitted in the name of Datex-Ohmeda, Inc., to the U.S. Patent and Trademark Office on August 19, 2003, and any continuations, continuations in part, or reissue applications based on such application.

F. ''Ziehm'' means Instrumentarium's C-arm business and its line of C-arm products, currently conducted through Instrumentarium Imaging Ziehm, Inc. and Instrumentarium Imaging Ziehm GmbH, and including, but not limited to, the facility located at 4181 Latham Street, Riverside, California 92501 and the facility located at Isarstrasse 40, d–90451 Nuremberg, Germany, and also including:

1. All tangible assets that comprise Instrumentarium's C-arm business, including research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies and other tangible property, and all assets used in connection with the Ziehm business; all licenses permits, and authorizations issued by any governmental organization relating to the Ziehm business; all contracts, teaming

arrangements, agreements, leases, commitments, certifications, and undertakings relating to the Ziehm business, including supply and distribution agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to the Ziehm business. Provided, however, that the Ziehm C-arm assets to be divested shall not include Instrumentarium facilities that are primarily used in connection with the Instrumentarium activities other than the C-arm business, which consist of Instrumentarium facilities where: (1) Administrative functions are performed; (2) Instrumentarium's 3D-imaging research and development project (''Instrumentarium's 3D Project'') is conducted; and (3) sales and distribution activities are managed.

2. All intangible assets used in the development, production, servicing, and sale of Intrumentarium's C-arm products, including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names (except to the extent such trademarks, trade names, service marks, or service names contain the trademark or names of Instrumentarium, Instrumentarium Imaging, or any variation thereof), technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, all research data concerning historic and current research and development related to the Ziehm business, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information defendants provide to their own employees, customers, suppliers, agents, or licensees, and all research data concerning historic and current research and development efforts relating to the Ziehm business, including but not limited to designs of experiments, and the results of successful and unsuccessful designs and experiments. Provided, however, that Instrumentarium's 3D Project shall not be included within the definition of the Ziehm C-arm business to be divested, but defendants shall: (1) Maintain and continue this project at 2002 or previously approved 2003 levels, whichever are higher; (2) enter into a joint research and development agreement with the Acquirer of Ziehm, at no cost to the Acquirer of Ziehm and for a period of time not to exceed one year, in connection with and to continue Instrumentarium's 3D Project (''the 3D Development Agreement''); and grant the Acquirer of Ziehm a perpetual, assignable, royalty-free nonexclusive license, limited to the field of use of C-arms, to all Instrumentarium rights to know how, technology, and patents relating to 3D imaging developed in the 3D Project that exist at the end of the term of the 3D Development Agreement (''Licensed Technology''). GE will further covenant not to sue the Acquirer of Ziehm with respect to claims based on such patent rights relating to the Licensed Technology.

G. ''Acquirer'' means the entity to which defendants divest Spacelabs or the entity to which defendants divest Ziehm; except that, in Sections IV and V, Acquirer shall only mean the entity to which defendants divest Spacelabs, and in Sections VI and VII, Acquirer shall only mean the entity to which defendants divest Ziehm.

H. ''Divestiture Assets'' means Spacelabs and/or Ziehm.

## III. Applicability

A. This Final Judgment applies to GE and Instrumentarium, 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.

B. Should the defendants, not in connection with making either of the divestitures required by this Final Judgment, sell or dispose of all or substantially all of their assets used in the C-arm of patient monitor business, they shall require, as a condition of such sale of disposition, that the purchaser agrees to be bound by the provisions of this Final Judgment; provided, however, that defendants need not obtain such an agreement from the Acquirer.

## IV. Divestiture of Spacelabs

A. Defendants are ordered and directed, within one hundred twenty (120) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest Spacelabs in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to an extension of this time period of up to two, thirty (30) day periods, not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest Spacelabs as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of Spacelabs. Defendants shall inform any person making inquiry regarding a possible purchase of Spacelabs that it is being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to Spacelabs customarily provided in a due-diligence process, except such information or documents subject to the attorney-client or work-product privileges. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide each prospective Acquirer and the United States information relating to the personnel involved in the production, operation, development, and sale of Spacelabs's patient monitoring products to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any defendant employee whose primary responsibility is the production, operation, development, or sale of Spacelabs's patient monitors. For a period of eighteen (18) months from the date of the divestiture of the Spacelabs business, defendants shall not solicit to hire, or hire, any such defendant employee that receives a substantially equivalent offer of employment from the approved Acquirer of the Spacelabs business, unless such employee is terminated or laid off by the Acquirer, or the Acquirer agrees that defendants may solicit and hire that employee.

D. Defendants shall permit prospective Acquirers of Spacelabs to have reasonable access to personnel and to make inspections of the physical facilities of the business to be divested; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due-diligence process.

E. Defendants shall warrant to the Acquirer of Spacelabs that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of Spacelabs.

G. Defendants shall warrant to the Acquirer of Spacelabs that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the sale of Spacelabs, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of Spacelabs.

H. Unless the United States otherwise consents in writing, the divestiture pursuant to section IV, or by trustee appointed pursuant to section V, of this Final Judgment, shall include the entire Spacelabs business as defined in section II.E, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that Spacelabs can and will be used by the Acquirer as part of a viable, ongoing business in the manufacture and sale of patient monitors in the United States. The divestiture, whether pursuant to section V of this Final Judgment,

1. Shall be made to the Acquirer that, in the sole discretion of the United States, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the manufacture and sale of patient monitors in the United States; and

2. Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between the Acquirer and defendants gives defendants the ability unreasonably to raise the Acquirer's costs to lower the Acquirer's efficiency or otherwise to interfere in the ability of the Acquirer to compete effectively.

**V. Appointment of Trustee To Divest Spacelabs**

A. If defendants have not divested Spacelabs with the time period specified in Section IV.A., 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 in good-faith consultation with the European Commission to ensure selection of a trustee acceptable to both the United States and the European Commission and approved by the Court to effect the divestiture of Spacelabs.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell Spacelabs. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effect by the trustee, subject to the provisions of sections IV, V, and VIII of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to section V.D. of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee to any ground other than the trustee's malfeasance or that the Acquirer has not been approved by the European Commission. Any objection by defendants on the ground of trustee malfeasance must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under section VIII.A; any objection by defendant based on lack of approval from the European Commission must be conveyed in writing to the United States and the trustee within two (2) days after the United States provides defendants with written notice, pursuant to Section VIII.C, stating that it does not object to the proposed divestiture of Spacelabs.

D. The 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 of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants, and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of Spacelabs and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accounts, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the 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 trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the 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 acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in Spacelabs, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest Spacelabs.

G. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the plaintiff who 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 trustee's appointment by a period requested by the United States.

**IV. Divestiture of Ziehm**

A. Defendants are ordered and directed, within one hundred twenty (120) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest Ziehm in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to an extension of this time period of up to two, thirty (30) day periods, not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest Ziehm as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known,

by usual and customary means, the availability of Ziehm. Defendants shall inform any person making inquiry regarding a possible purchase of Ziehm that it is being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to Ziehm customarily provided in a due-diligence process except such information or documents subject to the attorney-client or work-product privileges. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide each prospective Acquirer and the United States information relating to the personnel involved in the production, operation, development, and sale of Ziehm's C-arm products to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any defendant employee whose primary responsibility is the production, operation, development, or sale of Ziehm's C-arms. For a period of eighteen (18) months from the date of the divestiture of the Ziehm business, defendants shall not solicit to hire, or hire, any such defendant employee that receives a substantially equivalent offer of employment from the approved Acquirer of the Ziehm business, unless such employee is terminated or laid off by the Acquirer, or the Acquirer agrees that defendants may solicit and hire that employee.

D. Defendants shall permit prospective Acquirers of Ziehm to have reasonable access to personnel and to make inspections of the physical facilities of the business to be divested; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due-diligence process.

E. Defendants shall warrant to the Acquirer of Ziehm that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of Ziehm.

G. Defendants shall warrant to the Acquirer of Ziehm that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the sale of Ziehm, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of Ziehm.

H. Unless the United States otherwise consents in writing, the divestiture pursuant to Section VI, or by trustee appointed pursuant to Section VII, of this Final Judgment, shall include the entire Ziehm business as defined in Section II.F, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that Ziehm can and will be used by the Acquirer as part of a viable, ongoing business in the manufacture and sale of C-arms in the United States. The divestiture, whether pursuant to section VI or section VII of this Final Judgment,

1. Shall be made to the Acquirer that, in the sole discretion of the United States, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the manufacture and sale of C-arms in the United States; and

2. Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between the Acquirer and defendants give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

**VII. Appointment of Trustee To Divest Ziehm**

A. If defendants have not divested Ziehm within the time period specified in Section VI.A, 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 effect the divestiture of Ziehm.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell Ziehm. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable efforts by the trustee, subject to the provisioins of sections VI, VII, and VIII of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to section VII.D of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under section VIII.

D. The 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 trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants, and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of Ziehm and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the 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 acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in Ziehm, and shall describe in detail each contact

with any such person. The trustee shall maintain full records of all efforts made to divest Ziehm.

G. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the plaintiff who 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 trustee's appointment by a period requested by the United States.

**VIII. Notice of Proposed Divestitures**

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the trustee, whichever is then responsible for effecting any divestiture required herein, shall notify the United States of any proposed divestiture required by sections IV, V, VI, or VII of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer(s), any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer(s), and any other potential Acquirer. Defendants and the 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 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 Acquirer(s), any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether it objects to 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 Sections V.C or VII.C of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Sections IV, V, VI, or VII shall not be consummated. Upon objection by defendants under section V.C or VII.C, a divestiture proposed under section V or VII shall not be consummated unless approved by the Court.

**IX. Financing**

Defendants shall not finance all or any part of any purchase made pursuant to section IV, V, VI, or VII of this Final Judgment.

**X. Hold Separate**

Until all of the divestitures required by this Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize any divestiture order by this Court.

**XI. Affidavits**

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until each divestiture has been completed under section IV, V, VI, or VII, defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with section IV, V, VI, or VII of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets and to provide required information to prospective Acquirers, including the limitations, if any, on such information. 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) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with section X of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall individually keep all records of each of their individual efforts made to preserve and divest the Divestiture Assets until one year after all such divestitures have been completed.

**XII. Compliance Inspection**

A. For the 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 Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly 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 plaintiff's option, to require defendants to provide copies of, all books, ledgers, accounts, records 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' officer, 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 a duly 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.

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 the United States 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)(7) 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)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give defendants ten (10) calendar days' prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

**XIII. No Reacquisition**

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

**XIV. Retention of Jurisdiction**

This Court retains jurisdiction to enable any party to their 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.

**XV. Expiration of Final Judgment**

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of this entry.

**XVI. Public Interest Determination**

Entry of this Final Judgment is in the public interest.

Dated: _____.

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

United States District Judge

**Competitive Impact Statement**

Pursuant to Section 5(b) of the Clayton Act, as amended by Section 2 of the Antitrust Procedures and Penalties Act (''Tunney Act''), 15 U.S.C. 16(b)–(h), the United States 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 September 16, 2003, the United States of America filed a civil antitrust Compliant alleging that the proposed acquisition by General Electric Company (''GE'') of Instrumentarium OYJ (''Instrumentarium'') would violate section 7 of the Clayton Act, 15 U.S.C. 18. The Compliant alleges that GE and Instrumentarium are two of the nation's three leading suppliers of patient monitors used to take the vital physiologic measurements of patients requiring critical care (''critical care monitors''). The Complaint further alleges that GE dominates the sale of full-size, mobile C-arms used for surgical, orthopedic, pain management, and basic vascular procedures (''orthopedic-vascular C-arms''), with Instrumentarium as one of three smaller players in that market. GE and Instrumentarium complete head-to-head in the development, manufacture, as sale of critical care monitors and orthopedic-vascular C-arms.

The Complaint alleges that the proposed acquisition would eliminate head-to-head competition between GE and Instrumentarium and would substantially increase the likelihood that GE will unilaterally increase the prices or reduce the product quality of critical care monitors and orthopedic-vascular C-arms to the detriment of consumers. The request for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; (2) a permanent injunction preventing consummation of the proposed acquisition or preventing the defendants from entering into or carrying out any agreement, understanding, or plan, the effect of which would be to exchange those assets between the defendants; (3) an award of costs to the plaintiff; and (4) such other relief as the Court may deem just and proper.

When the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order and a proposed Final Judgment, which permit GE to complete its acquisition of Instrumentarium, yet preserve competition in the markets in which the proposed transaction raises significant competitive concerns. The proposed Final Judgment orders the defendants to divest two businesses to acquires that are acceptable to the United States: (1) Instrumentarium's Spacelabs business, which is Instrumentarium's primary manufacturing, distribution, research and development, and sales operations for critical care monitors; and (2) instrumentarium's Ziehm subsidiaries, which house Instrumentarium's C-arm business and its line of C-arm products, currently conducted through Instrumentarium Imaging Ziehm, Inc. and Instrumentarium Imaging Ziehm GmbH. The defendants must complete the required divestitures within one hundred twenty (120) calendar days after the filing of the compliant in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later. The United States, in its sole discretion, may agree to an extension of this time period of up to two, thirty (30) day periods, not to exceed sixty (60) calendar days in total. Under the terms of the Hold Separate Stipulation and Order, GE is required to take certain steps to ensure that the assets to be divested are preserved and held separate from its other assets and businesses.

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

**II. Description of the Events Giving Rise to the Alleged Violation**

*A. the Defendants and the Proposed Transaction*

GE is a global technology and services company that his its principal office in Fairfield, Connecticut. Ge Medical Systems, a subsidiary of GE, is a major worldwide provider of medical equipment products and services, including patient monitors and C-arms, and has its principal offices in Waukesha, Wisconsin. In 2002, Ge had total revenues of approximately $131.7 billion, and GE Medical Systems had revenues of approximately $9 billion.

Instrumentarium is a major worldwide provider of medical equipment products and service,s including patient monitor and C-arms, and has its principal offices in Helsinki, Finland. Instrumentarium manufactures and sells patient monitors through its Dates-Ohmeda and Spacelabs subsidiaries, and manufactures and sells C-amrs through its Ziehm operation. Instrumentariumm's revenues were approximately $1 billion in 2002.

GE and Instrumentarium reached an agreement on December 18, 2002 that provides for GE to purchase Instrumentarium through a cash tender offer valued at approximately $2 billion. This transaction, which would increase concentration in the already concentrated critical care monitor and

orthopedic-vascular C-arm markets, precipitated the government's suite.

*B. Product Markets*

1. Critical Care Monitors

a. *Description of the Market.* The Complaint alleges that patient monitors used to take the vital physiologic measurements of patients requiring critical care are a relevant product market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18. Patient monitors are routinely used throughout hospitals and other healthcare facilities to measure and display information about various patient physiologic parameters. THe parameters range from basic measurements, such as temperature, noninvasive blood pressure, and electrocardiography, to sophisticated invasive blood pressures (measurements of the blood pressure in various internal organs through the use of catheters). The information allows heathcare providers to monitor the health and stability of patients and is vital to the provision of healthcare.

Patients requiring critical care need more and different parameters monitored than do patients who are in less serious condition. To treat the patients requiring critical care, hospitals and other healthcare facilities must have monitors with the functionality to measure and simultaneously display information about a large number of parameters. Critical care monitors are sophisticated machines that can measure and display information regarding six or more patient parameters. In addition to basic parameters, critical care monitors typically measure cardiac output (the volume of blood pumped by the heart in a specific time period) and multiple invasive blood pressures. Critical care monitors also require significant networking capabilities so that information can be sent to and displayed at a central station.

Critical care monitors are distinct from other products, including monitors used to monitor patients in less serious condition (''low-acuity monitors'') and monitors used in the operating room (''OR monitors''). Low-acuity monitors are less complex and significantly less expensive machines that measure fewer parameters. OR monitors used specialized software and technologies not required elsewhere in the hospital. They may be configured for anesthesia machine compatibility, monitor different parameters, such as the level of anesthetic gas in a patient's airway, and tent to be significantly more expensive.

A hospital or other healthcare facility seeking to purchase a critical care monitor would not consider any other products—including monitor or an OR monitor—to be a realistic substitute. A small but significant increase in the price of a critical care monitor would not cause a sufficient number of hospitals or other healthcare facilities seeking to purchase a critical care monitor to switch to an OR monitor, a low-acuity monitor, or any other type of medical device so as to make such a price increase unprofitable and unsustainable.

The Complaint alleges that the relevant geographic market for the sale of critical care monitors in the United States. Any company seeking a sell a critical care monitor in the United States must register with the Food and Drug Administration (''FDA'') and receive approval for its products. To be competitive, a critical care monitor supplier must also establish local distribution, service, and support networks. Thus, in the face of a small but significant increase in the price of critical care monitors, purchasers in the United States cannot turn to any producer of critical care monitors that has not received FDA approval for its products, and are unlikely to turn in substantial numbers to providers that have not established a sales and service presence in the Untied States.

b. *Harm to Competition as a Consequence of the Acquisition.* Critical care monitors are highly differentiated products, which are distinguished from each other by price, product features, vendor reputation, and customer service. The market for critical care monitors is already highly concentrated. GE, Instrumentarium, and one other firm are the leading suppliers. Based on shares of unit sales, GE has a share of approximately 33 percent of the market, and Instrumentarium has a share of approximately 16 percent. While there are other firms that manufacture critical care monitors, product limitations and other factors, such as their degree of customer acceptance, lessen the ability of these firms to complete for many customers.

GE and Instrumentarium have competed vigorously in the development, manufacture, and sale of critical care monitors. A significant number of customers view GE's and Instrumentarium's monitors as particularly close substitutes and do not view the products of the other vendors as equally close. In individualized negotiations, these customers have benefitted from the rivalry between GE and Instrumentarium, and received lower prices, better quality, or improved service as a result. Hospitals and other healthcare facilities that purchase critical care monitors have also benefitted generally from competition between GE and Instrumentarium on price, innovation, product features, and service. The proposed transaction would eliminate the competition between GE and Instrumentarium, reduce the number of significant suppliers of critical care monitors from three to two, and substantially increase the likelihood that GE will unilaterally increase the price of critical care monitors to a significant number of customers.

Successful entry or expansion in the development, manufacture, and sale of critical care monitors is difficult, time-consuming, and costly, and is unlikely to defeat an anticompetitive price increase or reduction in product quality in the event that GE acquired Instrumentarium. First, suppliers require FDA approval to begin marketing a critical care monitor or to introduce a new model. The product development and approval process is costly and time-consuming. Second, vendor reputation is an important factor in effectively selling critical care monitors. Hospitals and other healthcare facilities rely on critical care monitors when treating patients that are in serious condition and are reluctant to purchase from suppliers, such as new entrants or fringe firms, whose products are not well known. Third, it takes substantial time and resources to develop the expertise necessary to successfully produce and market critical care monitors. Vendors must also maintain significant ongoing research and development efforts to continue innovations that meet customer demand as well as stringent safety standards. Finally, suppliers of critical care monitors must go through the costly and time-consuming process of establishing extensive sales and service networks. Customers rely on sales representatives to inform them about new products and technologies. Many hospitals and other healthcare facilities also rely on critical care monitor providers for service and are reluctant to purchase from vendors without an established presence and service network in their area.

2. Orthopedic-Vascular C-Arms

a. *Description of the Market.* The Complaint alleges that orthopedic-vascular C-arms are a separate and distinct product market for purposes of Section 7 of the Clayton Act, 15 U.S.C. 18. C-arms are fluoroscopic x-ray devices that offer real-time, continuous images during certain medical and surgical procedures. C-arms may be mobile (''mobile C-arms''), stationary (''fixed C-arms''), or small (''mini C-

arms''). Mobile C-arms typically consist of two wheeled units, one to support the C-arm unit and the other to support the display monitors and imaging processor. The C-arm unit consists of a curved arm with an x-ray tube mounted on one end and an image intensifier, which converts the x-rays into a viewable image, on the other end. Orthopedic-vascular C-arms are mobile C-arms designed for general surgery, orthopedic, pain management, or basic vascular procedures. These procedures include, but are not limited to, placing splints, localized needle biopsy, endoscopy, colonoscopy, and basic vascular procedures, such as balloon angiography and endovascular stent graphs.

A hospital or other healthcare facility seeking to purchase an orthopedic-vascular C-arm would not consider any other imaging equipment, such as a fixed C-arm, mini C-arm, CT scanner, or other x-ray equipment, to be a realistic substitute. Fixed C-arms are dedicated to a specific room, are generally used for cardiac procedures, and cost significantly more than any mobile C-arm. Mini C-arms cannot image an entire torso and are limited in the medical procedures in which they can be used. CT scanners and other x-ray equipment do not have the functionality to provide real-time, continuous viewing during medical procedures.

Another type of mobile C-arm is designed for advanced vascular and cardiac procedures. These mobile C-arms are designed to image a beating heart or the brain. To produce a good image, these mobile C-arms are equipped with greater hardware and functionality and are therefore priced at much higher levels than orthopedic-vascular C-arms. A hospital or other healthcare facility seeking to purchase an orthopedic-vascular C-arm would not consider a mobile C-arm designed for advanced vascular and cardiac procedures to be a realistic substitute. A small but significant increase in the price of an orthopedic-vascular C-arm would not cause a sufficient number of hospitals or other healthcare facilities seeking to purchase orthopedic-vascular C-arms to switch to any alternative products so as to make such a price increase unprofitable and unsustainable.

The Complaint alleges that the relevant geographic market for the sale or orthopedic-vascular C-arms is the United States. Any company seeking to sell an orthopedic-vascular C-arm in the United States must register with the FDA and receive approval for its products. To be competitive, an orthopedic-vascular C-arm supplier must also establish local distribution, service, and support networks. Thus, in the face of a small but significant increase in the price of orthopedic-vascular C-arms, purchasers in the United States cannot turn to any producer of orthopedic-vascular C-arms that has not received FDA approval for its products, and are unlikely to turn in substantial numbers to providers that have not established a sales and service presence in the United States.

b. *Harm to Competition as a Consequence of the Acquisition.* The market for orthopedic-vascular C-arms is highly concentrated. GE dominates the sale of orthopedic-vascular C-arms, with approximately 68 percent of unit sales. Instrumentarium and two other firms have smaller market shares. The market for orthopedic-vascular C-arms would become even more concentrated if GE acquired Instrumentarium.

Orthopedic-vascular C-arms are differentiated on the basis of image quality, ease of use, weight and size, firm reputation, and service. Customers negotiate transactions individually with one or more vendors and have distinct and ranging preferences for certain products and vendors. The Complaint alleges that Instrumentarium provides GE with significant competition in the development, manufacture, and sale of orthopedic-vascular C-arms. This has included competition on price, service, innovation, and product features, such as image quality. A significant number of customers view the GE and Instrumentarium orthopedic-vascular C-arm products as close substitutes, and do not view the products of other vendors to be equally close. During individual negotiations, these customers have benefited from the competition between GE and Instrumentarium to obtain loser prices, improved product quality and services, and better contract terms. The proposed transaction would eliminate the competition between GE and Instrumentarium, remove one of the few vendors providing competition to GE in orthopedic-vascular C-arm sales, and substantially increase the likelihood that GE will unilaterally increase the price of orthopedic-vascular C-arms to a significant number of customers.

If GE acquires Instrumentarium, there is unlikely to be timely entry by any firm that would be sufficient to defeat an anticompetitive price increase or reduction in product quality. Successful entry and expansion is difficult, time-consuming, and costly for several reasons. First, to sell an orthopedic-vascular C-arm to a customer in the United States, a firm must gain FDA approval. The product development and approval process is costly and time-consuming. Second, a vendor's reputation and name recognition are extremely important factors in effectively selling orthopedic-vascular C-arms; hospitals and healthcare facilities seek to purchase products with proven records of reliability, in no small part because mobile C-arms are used during important medical procedures, ad a mobile C-arm's poor performance is costly and can endanger a patient's life or physical condition.

Third, because hospitals and other healthcare facilities rely on visits from sales representatives to learn about new products and technologies, and often rely on vendors for product service, a prospective supplier of orthopedic-vascular C-arms would have to establish sales, distribution, and service networks. Fourth, it takes substantial time and resources to develop the expertise necessary to successfully produce and market orthopedic-vascular C-arms. Suppliers must also maintain significant ongoing research and develop efforts to continue innovations that meet customer demand as well as stringent safety standards to ensure future sales.

## II. Explanation of the Proposed Final Judgment

The provisions of the proposed Final Judgment are designed to eliminate the anticompetitive effects of GE's proposed acquisition of Instrumentarium in the critical care monitor and orthopedic-vascular C-arm markets by establishing a new, independent, economically viable competitor in each of those markets.

The proposed Final Judgment orders the defendants to divest the Spacelabs and Ziehm businesses to acquirers acceptable to the United States, in it sole discretion. The defendants must complete the required divestitures within one hundred twenty (120) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later. The United States, in its sole discretion, may agree to an extension of this time period of up to two, thirty (30) days periods, not to exceed sixty (60) calendar days in total.

Because GE and Instrumentarium have significant operations in Europe as well as the United States, the European Commission also reviewed GE's proposed acquisition of Instrumentarium. To obtain regulatory approval in Europe, GE entered into Commitments that, among other things, required it to sell its Spacelabs patient monitor business. These Commitments, approved by the European Commission on September 2, 2003 (''the EC

Commitments''), included a detailed description of the Spacelab business.

The proposed Final Judgment adopts this detailed description as the definition of the Spacelabs business to be divested and attaches the description as Exhibit 1 to the proposed Final Judgment. Because this detailed description includes highly confidential information, such as customer lists and supply agreements, it was filed under seal. A nonconfidential version of the description was filed as Exhibit 2 to the proposed Final Judgment. There is, however, one addition to the description of the Spacelabs business to be divested. The proposed Final Judgment also provides that the acquirer of the Spacelabs business shall grant GE a limited license to certain technology to be divested, so that Instrumentarium can continue to use this technology in its connectors for patient monitoring equipment. The terms and duration of such license are to be negotiated between GE and the acquirer of the Spacelabs business. The proposed Final Judgment does not require GE to divest Datex-Ohmeda, another Instrumentarium business unit that manufactures and sells patient monitors, because that unit predominately sells patient monitors other than critical care monitors.

If the defendants have not divested the Spacelabs business within the required time period, the Court, upon application of the United States, is to appoint a trustee to complete the divestiture. Because the Commitments entered into in Europe also require selection of a trustee if GE does not complete the divestitures within a certain time, the proposed Final Judgment provides that the United States shall select a trustee, to be approved by the Court, after good-faith consultation with the European Commission to ensure selection of a trustee acceptable to both the United States and the European Commission. The proposed Final Judgment provides that the defendants will pay all costs and expenses of the trustee. After the trustee's appointment becomes effective, the trustee will file monthly reports with the United States and the Court, setting forth the trustee's efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the plaintiff will have the opportunity to 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 and the term of the trustee's appointment by a period requested by the United States.

The proposed Final Judgment defines the Ziehm business to be divested as Instrumentarium's C-arm business and its line of C-arm products, currently conducted through two subsidiaries: Instrumentarium Imaging Ziehm, Inc. and Instrumentarium Imaging Ziehm GmbH. The business to be divested includes, with a few limited exceptions, all tangible and intangible assets used in Instrumentarium's C-arm business. These assets include two physical facilities (located in Riverside, California and Nuremberg, Germany), all contracts and agreements, and all intellectual property, except the use of the name ''Instrumentarium.'' The proposed Final Judgment has a separate provision with regard to an Instrumentarium 3D-imaging research and development project that was conducted for Instrumentarium's other imaging businesses, as well as for its C-arm business. This ongoing 3D project is not part of the divestiture package, but the proposed Final Judgment requires the defendants to (1) maintain the project; (2) continue it for up to one year on a joint basis with the acquirer of Ziehm; and (3) grant the acquirer of Ziehm a perpetual, assignable, royalty-free nonexclusive license, limited to the field of use of C-arms, to the intellectual property relating to 3D-imaging developed in the project during that period.

If the defendants have not divested the Ziehm business within the required time period, the Court, upon application of the United States, is to appoint a trustee selected by the United States and approved by the Court to complete the divestiture. The proposed Final Judgment provides that the defendants will pay all costs and expenses of the trustee. After the trustee's appointment becomes effective, the trustee will file monthly reports with the United States and the Court, setting forth the trustee's efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the plaintiff will have the opportunity to make recommendations to the Court, which shall enter such orders as appropriate to carry out the purpose of the trust, including extending the trust and the term of the trustee's appointment by a period requested by the United States.

The proposed Final Judgment takes steps to ensure that the acquirers of both the SpaceLabs and Ziehm businesses can and will be able to use these operations as viable, ongoing businesses in the manufacture and sale of critical care monitors and orthopedic-vascular C-arms, respectively, in the United States. The United States, in its sole discretion, must be satisfied that both the Spacelabs and Ziehm acquirers have the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the manufacture and sale of critical care monitors and orthopedic-vascular C-arms, respectively, in the United States.

The proposed Final Judgment is thus designed to maintain the present level of competition in both the critical care monitor and orthopedic-vascular C-arm markets by replacing the competitor eliminated in each of these markets as a result of the acquisition with equally viable and effective competitors. It accomplishes this goal by, among other things: (1) Requiring prompt divestitures so that the viability of the Spacelabs and Ziehm businesses is not harmed by an unreasonable delay in accomplishing those divestitures; (2) requiring divestitures of the tangible and intangible assets that make up each of the divested businesses so that the acquirers have the assets needed to make Spacelabs and Ziehm viable, competitive businesses; and (3) ensuring that the acquirers of Spacelabs and Ziehm have the intent and capability of competing effectively in the manufacture and sale of critical care monitors and orthopedic-vascular C-arms, respectively, in the United States.

## 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 a federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under 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 lawsuit that any private party may bring 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 Tunney Act, provided that the United States has not withdrawn its consent. The Tunney Act conditions entry upon the Court's determination that the proposed Final Judgement is in the public interest.

The Tunney Act provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: James R. Wade, Chief, Litigation III Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 300, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court of 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 GE's acquisition of Instrumentarium. However, the United States is satisfied that the divestiture of the assets specified in the proposed Final Judgment will preserve competition in the production and sale of critical care monitors and orthopedic-vascular C-arms. The divestitures will preserve the structure of the markets that existed prior to the acquisition and will preserve the existence of independent competitors.

## VII. Standard of Review Under the Tunney Act for the Proposed Final Judgment

The Tunney Act requires that proposed consent judgments in antitrust cases brought by the United States be 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.'' In making that determination, the Court may consider:

> (1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) The impact of entry of such judgment 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). As the United States Court of Appeals for the D.C. Circuit held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft,* 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, ''[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 Senator Tunney),[1] Rather,

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

*United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. May 17, 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also* Microsoft, 56 F.3d at 1460–62. Case law requires that

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest 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).[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.''' *United States* v. *Am. Tel. & Tel. Co.,* 552F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *Gillette,* 406 F. Supp. at 716), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D.) Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy).

Moreover, the Court's role under the Tunney Act 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. 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

[1] *See also United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (recognizing it was not the court's duty to settle; rather, the court must only answer ''whether the settlement achieved (was] within the reaches of the public interest''). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the Tunney Act. Although the Act authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. No. 93–1463, 93rd Cong., 2d Sess. 8–9 (1974), reprinted in 1974 U.S.C.C.A.N. 6535, 6538.

[2] CF. BNS, 858 F.2d at 463 (holding that the court's ''ultimate authority under the [Tunney] Act is limited to approving or disapproving the consent decree''); *Gillette*, 406 F. Supp. at 716 (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass'') *See* generally *Microsoft*, 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' ''

''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 might have but did not pursue. *Id.* at 1459–60.

**VIII. Determinative Documents**

There are no determinative materials or documents within the meaning of the Tunney Act that were considered by the United States in formulating the proposed Final Judgment.

Dated: October 30, 2003.

Respectfully submitted,

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**Certificate of Service**

The undersigned certifies that a copy of the Competitive Impact Statement was served on the following counsel by electronic mail in PDF format or hand delivery, this 30th day of October 2003:

Deborah L. Feinstein, Arnold & Porter, 555 Twelfth Street, NW., Washington, DC 20004–1206

Wayne Dale Collins, Shearman & Sterling, 599 Lexington Avenue, New York, NY 10022

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[FR Doc. 03–28282 Filed 11–10–03; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Digital Subscriber Line Forum

Notice is hereby given that, on September 26, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Digital Subscriber Line Forum (''DSL'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purchase of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 1–800 FAST DSL, La Jolla, CA; Be Connected Ltd., Rosh Ha'ayin, ISRAEL; Coppergate Communications, Tel Aviv, ISRAEL; EANTIC, Berlin, GERMANY; Flextronics, Johannesburg, SOUTH AFRICA; ITRI, Chutung, Hsinchu, TAIWAN; Marcoin Communications, Coventry, UNITED KINGDOM; NTCA, Arlington, VA; Operax AB, Lulea, SWEDEN; Serconet, Southborough, MA; SupportSoft, Redwood City, CA; Taicom International Inc., Fremont, CA; and Telecordia Technologies, Morristown, NJ, have been added as parties to this venture. Sonera Corporation is now TeliaSonera AB, Helsinki, FINLAND.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DSL intends to file additional written notifications disclosing all changes in membership.

On May 15, 1995, DSL filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 25, 1995 (60 FR 38058).

The last notification was filed with the Department on July 16, 2003. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 15, 2003 (68 FR 48940).

**Dorothy B. Fountian,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 03–28245 Filed 11–10–03; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association

Notice is hereby given that, on October 8, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), DVD Copy Control Association (''DVD CCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Accesstek, Inc., Hsinchu, TAIWAN; Advanced Media Technology Co., Ltd., Seongnam-City, REPUBLIC OF KOREA; Boston Acoustics, Inc., Peabody, MA; Broadcom Corporation, Irvine, CA; Feng Sheng Technology Co., Ltd., Taipei Hsien, TAIWAN; Guangdong Kwanloon Electronics and Technology Co., Ltd., Shenzhen, PEOPLE'S REPUBLIC OF CHINA; Hanbit System Co., Ltd., Kyonggi-do, REPUBLIC OF KOREA; Harvests Multimedia Pte Ltd., Singapore, SINGAPORE; ims international media service spa, Varese, ITALY; Jiangsu Syber Electronic Co., Ltd., Zhenjiang, PEOPLE'S REPUBLIC OF CHINA; Kent Worldco., Ltd., Taipei, TAIWAN; Media Mastering Services, LLC., Brea, CA; Media Solutions, Paris, FRANCE; New York Nickel LLC, Bohemia, NY; Nexphil Electronics Co., Ltd., Seoul, REPUBLIC OF KOREA; OPT Corporation, Nagano-ken, JAPAN; PitsExpert Technology Co., Ltd., Taipei, TAIWAN; PrediWave Corporation, Fremont, CA; Primare Systems AB, Vaxjo, SWEDEN; Shenzhen Contel Electronics Technology Co., Ltd., Shenzhen, PEOPLE'S REPUBLIC OF CHINA; SOHO Tech Village, Ltd., Eastlake, OH; and Techsan I&C Co., Pyeongtaek-Si, REPUBLIC OF KOREA have been added as parties to this venture.

Also, Aralion Inc., Seoul, REPUBLIC OF KOREA; Cyrus Electronics Ltd., Cambridge, UNITED KINGDOM; E&S Electronics Co., Ltd., Seoul, REPUBLIC OF KOREA; EMI Operations Italy S.p.A., Caronno Pertusella, ITALY; Electric Switch Limited, London, UNITED KINGDOM; Infineon Technologies Corporation, San Jose, CA; Macro Image Technology, Inc., Seoul, REPUBLIC OF KOREA; Songpagu, Seoul, REPUBLIC OF KOREA; MicroPious Co., Ltd., Pyeongtaek-Si, REPUBLIC OF KOREA; Musion Co., Ltd., Seoul, REPUBLIC OF KOREA; Nakamichi Corporation, Tokyo, JAPAN; Prochips Technology, Seoul, REPUBLIC OF KOREA; and UP Technology, Seoul, REPUBLIC OF KOREA have dropped as parties to this venture. In addition, Delux Video has changed its name to Deluxe Media Services, Inc., Vernon Hills, IL; Dongguan Albatronics (Far East) Electronics Co., Ltd. has changed its name to Dongguan Great Vision Technology Ltd., Guangdong, PEOPLE'S REPUBLIC OF CHINA; and Shenzhen Landel Electronics Technology Co., Ltd. has changed its name to Shenzhen Contel Electronics Technology Co., Ltd., Shenzhen, PEOPLE'S REPUBLIC OF CHINA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notification disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to Section