Issued: August 8, 2011.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. 2011–20467 Filed 8–11–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'')

Notice is hereby given that on August 3, 2011, a proposed Consent Decree in *United States and Commonwealth of Massachusetts* v. *BIM Investment Corp. et al.,* Civil Action No. 1:11-cv-11382 was lodged with the United States District Court for the District of Massachusetts.

The Consent Decree resolves claims brought by the United States, on behalf of the United States Department of the Interior (''DOI''), acting through the United States Fish and Wildlife Service, and the Commonwealth of Massachusetts (''Commonwealth''), on behalf of the Secretary of Energy and Environmental Affairs (''EEA''), against four parties (''Settling Defendants'') under Section 107 of CERCLA, 42 U.S.C. 9607. In their respective complaints, filed concurrently with the Consent Decree, the United States and the Commonwealth sought damages in order to compensate for and restore natural resources injured by the release or threatened release of hazardous substances at or from the Blackburn and Union Privileges Superfund Site in Walpole, Massachusetts (the ''Site''), along with the recovery of costs incurred in assessing such damages.

Under the Consent Decree, Settling Defendants Tyco Healthcare Group LP, W.R. Grace & Co.-Conn., BIM Investment Corporation, and Shaffer Realty Nominee Trust will pay $1,000,000 for natural resource damages restoration projects to be conducted by DOI and EEA. The Consent Decree also requires the Settling Defendants to reimburse the United States and the Commonwealth for a combined $94,169.56 in assessment costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and Commonwealth of Massachusetts* v. *BIM Investment Corp. et al.,* D.J. Ref. No. 90–11–3–09667/1.

During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.justice.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.75 (25 cents per page reproduction cost), payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–20581 Filed 8–11–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Verifone Systems, Inc. and Hypercom Corporation; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Verifone Systems, Inc. and Hypercom Corporation,* Civil Action No. 1:11–cv–00887. On June 27, 2011, the United States filed an Amended Complaint alleging that the proposed acquisition by Verifone Systems, Inc. of the business assets of Hypercom Corporation would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed on August 4, 2011, requires the Defendants to divest Hypercom's U.S. business, along with certain tangible and intangible assets.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (*telephone:* 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to James J. Tierney, Chief, Networks and Technology Enforcement Section, Antitrust Division, Department of Justice, Washington, DC 20530 (*telephone:* 202–307–6200).

Patricia A. Brink,

Director of Civil Enforcement.

In the United States District Court for the District of Columbia

United States of America, United States Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530, Plaintiff, v. *Verifone Systems, Inc., 2099 Gateway Place, Suite 600, San Jose, CA 95110, and Hypercom Corporation, 8888 East Raintree Drive, Suite 300, Scottsdale, AZ 85260,* Defendants.

Case: 1:11–cv–00887.
Assigned to: Kessler, Gladys.
Assign. Date: 5/12/2011.
Description: Antitrust.

Amended Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action against VeriFone Systems Inc. (''VeriFone''), and Hypercom Corporation (''Hypercom'') pursuant to the antitrust laws of the United States to enjoin VeriFone's proposed acquisition of Hypercom, and to obtain such other equitable relief as the Court deems appropriate. The United States alleges as follows:

I. Nature of Action

1. Point of sale (''POS'') terminals enable retailers and other firms to accept a wide range of non-cash payment types, such as credit cards and debit cards, at millions of locations nationwide. Given the increasing popularity of electronic payments, the vast majority of merchants need to accept such cards and use POS terminals to handle billions of dollars of on-site electronic payments daily. This complaint seeks to enjoin Defendants

VeriFone and Hypercom from proceeding with a transaction that, if permitted, would eliminate nearly all competition in the sale of POS terminals in the United States.

2. VeriFone and Hypercom are two of the three leading providers of POS terminals in the United States. If the Verifone-Hypercom transaction is not enjoined, Hypercom would cease to exist as an independent competitor in this concentrated market. The proposed transaction would result in VeriFone and the third leading provider of POS terminals in the United States, Ingenico, S.A. (''Ingenico''), becoming a duopoly in full control of the sale of POS devices in the United States.

3. POS terminals can operate on a standalone basis, connected to payment networks by a standard telephone line or by wired or wireless internet protocol technologies. POS terminals of this type are commonly referred to in the industry as ''countertop'' machines, and are typically used by small- or medium-sized businesses or retailers to enable them to accept credit and debit cards. POS terminals can also be connected to an electronic cash register or similar device as part of an integrated point of sale system. POS terminals of this type are often referred to in the industry as ''multi-lane'' or ''consumer-facing'' machines, and are typically used by large retailers to accept credit and debit cards. Each of these industry segments constitutes an antitrust market. The countertop POS terminals market and the multi-lane POS terminals market are the two relevant markets that would be affected by the proposed transaction challenged in this Complaint. The line of business including both relevant markets is referred to as the ''POS terminals industry.''

4. The POS terminals industry, both in the United States and on a worldwide basis, is extremely concentrated and dominated by VeriFone, Hypercom, and Ingenico. In 2009, according to a leading market analyst report, VeriFone had a 48 percent share of the sale of all POS terminals in the United States, while Hypercom had an 18 percent share and Ingenico had a 26 percent share.

5. Similarly, each of the relevant markets is extremely concentrated in the United States and there is little timely prospect of either of them becoming less concentrated. VeriFone and Hypercom together control over 60 percent of the countertop POS terminals market in the United States. VeriFone, Hypercom, and Ingenico together control well over 90 percent of the multi-lane POS terminals market in the United States. Their position in the relevant markets is also protected by the high barriers to entry that characterize these markets.

6. In November 2007, VeriFone's CEO, Douglas G. Bergeron, projected that the worldwide POS terminals industry was trending towards a ''very benevolent duopoly'' consisting solely of VeriFone and Ingenico. Bergeron's description of such a potential duopoly as ''very benevolent'' has led VeriFone to eschew robust and vibrant competition in favor of cooperation with, and benevolence toward, competitors. Consummation of the proposed transaction would achieve Mr. Bergeron's vision.

7. On November 17, 2010, following approximately eighteen months of negotiations, VeriFone agreed to purchase Hypercom in a $485 million deal that would combine two of only three significant sellers of POS terminals in the United States.

8. VeriFone's proposed acquisition of Hypercom would substantially extend VeriFone's position as the largest seller of all POS terminals in the United States. Ingenico would be the only remaining substantial competitor to VeriFone. Post-transaction, VeriFone and Ingenico together would dominate the multilane POS terminals market—the very duopoly envisioned by VeriFone's CEO four years ago. The acquisition would reduce competition in the relevant markets by eliminating Hypercom as an independent source of competitive discipline and by reducing impediments to successful coordination. This would inevitably lead to higher prices, inferior service, a reduction in the variety of products sold, and reduced innovation.

9. The United States requests that the Court enjoin VeriFone's acquisition of Hypercom to protect consumers throughout United States from the loss of competition in the provision of devices used to facilitate billions of retail transactions each year.

II. Defendants

10. VeriFone is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located in San Jose, California. In the fiscal year ending October 31, 2010, VeriFone earned more than $1 billion in revenues worldwide.

11. Hypercom is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located in Alpharetta, Georgia. In 2010, Hypercom earned more than $450 million in revenues worldwide.

III. Jurisdiction, Venue, and Commerce

12. The United States brings this action pursuant to Section 4 of the Sherman Act, 15 U.S.C. 4 to prevent and restrain Defendants from violating Section 1 of the Sherman Act, 15 U.S.C. 1, and pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

13. The Court has subject-matter jurisdiction over this action pursuant to Section 4 of the Sherman Act, 15 U.S.C. 4, Section 15 of the Clayton Act, as amended, and 28 U.S.C. 1345. The Court also has subject-matter jurisdiction pursuant to 28 U.S.C. 1331 and 1337(a), as Defendants sell POS terminals and/or other products and services in the United States, and sell products and services in the flow of interstate commerce. Defendants' products and services involve a substantial amount of interstate commerce. Sales of countertop POS terminals and multi-lane POS terminals each exceeded $150 million in the United States in 2010.

14. This Court has personal jurisdiction over each Defendant and venue is proper over VeriFone and Hypercom in this District under Section 12 of the Clayton Act, 15 U.S.C. 22, because Defendants VeriFone and Hypercom both transact business and are found within this District.

IV. Adverse Competitive Effects

15. VeriFone's proposed acquisition of Hypercom would reduce competition in two antitrust markets: The sale of countertop POS terminals and the sale of multi-lane POS terminals. VeriFone and Hypercom are two of only three companies with substantial sales in the countertop POS terminals market; the third company with significant sales is First Data Corporation (''First Data''), which is vertically integrated and only sells devices to customers of its merchant processing services. VeriFone and Hypercom are two of the only three substantial competitors in the multi-lane POS terminals market; Ingenico is the third competitor in that market. The proposed acquisition would eliminate all competition between VeriFone and Hypercom, and would increase the likelihood of coordination in the POS terminals markets.

A. Relevant Product and Geographic Markets

1. Countertop POS Terminals Market

16. The sale of countertop POS terminals suitable for use in the United States is a relevant antitrust market for purposes of Section 1 of the Sherman Act and a relevant antitrust market and

line of commerce for purposes of Section 7 of the Clayton Act.

17. Other types of payment devices are not adequate substitutes for countertop POS terminals. Purchasers of countertop POS terminals would not switch to other types of payment systems in sufficient numbers to render unprofitable a price increase imposed by a hypothetical monopolist in the sale of countertop POS terminals suitable for use in the United States.

18. A hypothetical monopolist of countertop POS terminals suitable for use in the United States could profitably raise prices by at least a small but significant, non-transitory amount. Purchasers of countertop POS terminals located in the United States would not be able to switch to other products, including to countertop POS terminals made for non-U.S. markets, to defeat such a price increase by a hypothetical monopolist.

19. The relevant geographic market is the United States, where the customers for countertop POS terminals suitable for use in the United States are located. Countertop POS terminals suitable for use in the United States may be manufactured anywhere in the world.

20. Countertop POS terminals sold in other parts of the world will not work unmodified in the United States. Countertop POS terminals sold in the United States must be customized for the demands of U.S. purchasers and must comply with distinct U.S. technical specifications and certification requirements.

2. Multi-lane POS Terminals Market

21. The sale of multi-lane POS terminals suitable for use in the United States is a relevant antitrust market for purposes of Section 1 of the Sherman Act and a relevant antitrust market and line of commerce for purposes of Section 7 of the Clayton Act.

22. Other types of payment devices are not adequate substitutes for multi-lane POS terminals. Purchasers of multi-lane POS terminals would not switch to other types of payment systems in sufficient numbers to render unprofitable a price increase imposed by a hypothetical monopolist in the sale of multi-lane POS terminals suitable for use in the United States.

23. A hypothetical monopolist of multi-lane POS terminals suitable for use in the United States could profitably raise prices by at least a small but significant, non-transitory amount. Purchasers of multi-lane POS terminals located in the United States would not be able to switch to other products, including to multi-lane POS terminals made for non-U.S. markets, to defeat such a price increase by a hypothetical monopolist.

24. The relevant geographic market is the United States, where the customers for multi-lane POS terminals suitable for use in the United States are located. Multi-lane POS terminals suitable for use in the United States may be manufactured anywhere in the world.

25. Multi-lane POS terminals sold in other parts of the world will not work unmodified in the United States. Multi-lane POS terminals sold in the United States must be customized for the demands of U.S. purchasers and must comply with distinct U.S. technical specifications and certification requirements.

B. Market Concentration

26. VeriFone's proposed acquisition of Hypercom would increase market concentration in the POS terminals markets.

27. As articulated in the Horizontal Merger Guidelines issued by the Department of Justice and the Federal Trade Commission, the Herfindahl-Hirschman Index (''HHI'') is a measure of market concentration.[1] Market concentration is often one useful indicator of the level of competitive vigor in a market and the likely competitive effects of a merger. The more concentrated a market, and the more a transaction would increase concentration in a market, the more likely it is that a transaction would result in a meaningful reduction in competition harming consumers. Mergers resulting in highly concentrated markets (with an HHI in excess of 2500) that involve an increase in the HHI of more than 200 points are presumed to be likely to enhance market power under the merger guidelines.

28. The countertop POS terminals market and the multi-lane POS terminals market are already highly concentrated, even before the effect of the proposed transaction is taken into account. VeriFone's proposed acquisition of Hypercom would result in a substantial increase in the HHI in both markets in excess of the 200 points presumed to be anticompetitive under the merger guidelines.

C. VeriFone's Proposed Acquisition of Hypercom Would Result in Competitive Harm

29. VeriFone's proposed acquisition of Hypercom would reduce competition in the relevant markets, leading to unilateral and coordinated effects such as an increase in prices and a reduction in innovation, quality, product variety, and service.

30. VeriFone's proposed acquisition of Hypercom would eliminate all competition between the two companies. VeriFone is the largest provider of both countertop and multi-lane POS terminals. Hypercom is one of only two other companies currently selling a significant number of countertop POS terminals and is the third-largest provider of multi-lane POS terminals. The competition between VeriFone and Hypercom is therefore especially important to consumers, and the elimination of that competition would substantially reduce the overall level of competition in each market.

31. The acquisition would result in unilateral effects in each relevant market as VeriFone would be able to raise the price of both VeriFone and Hypercom products because it would recapture some sales that would have been lost absent the acquisition as purchasers reacted to such price increases by switching between VeriFone and Hypercom products.

32. Eliminating competition between Verifone and Hypercom would also reduce the number of significant competitors from three to two in the POS terminals markets, resulting in the very ''duopoly'' projected by VeriFone's CEO and heightening the potential for coordinated behavior. Coordination, whether tacit or explicit, is especially likely because the acquisition would enhance each company's ability to deter competitive behavior in one market by retaliating across a range of other product and geographic markets, if necessary.

D. Absence of Countervailing Factors

1. Entry

33. Supply responses from competitors or potential competitors would not prevent the likely anticompetitive effects of the proposed transaction.

34. Industry participants have described the POS terminals industry as highly concentrated, with high barriers to entry. These entry barriers include the need to obtain certifications, keeping up with changing payment

[1] See U.S. Dep't of Justice, Horizontal Merger Guidelines § 5.3 (2010), available at *http://www.justice.gov/atr/public/guidelines/hmg-2010.html.* The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches a maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

regulations, having sufficient scale, being in close proximity to customers, and having a broad portfolio of customer applications. These factors are entry barriers for both the countertop and multi-lane POS terminals markets. Given these and other significant barriers to entry or expansion, entry or repositioning would not be likely, timely, or sufficient to prevent the anticompetitive effects that would result from the proposed transaction.

35. Hypercom's CEO, Philippe Tartavull, has emphasized the difficulty of entering the POS terminals industry, explaining that ''[s]maller regional manufacturers who enter the business find it difficult because a typical product cycle is often too long for them to support'' and they are ''limited in the number of products they can bring to market.'' When these factors are combined with the ''high costs of certifying new products,'' Tartavull concluded, ''it can be very difficult to enter a new market geography or market segment. It's not impossible, but it's not easy. Other companies have tried, but when all is said and done, there are two primary providers to the North American market, and Hypercom is one of them.''

36. The only firm to enter the U.S. market in recent years and achieve any non-trivial amount of sales is First Data, a leading provider of electronic payment networks and services. Despite being as well placed as any company to break into the countertop POS terminals market given its complementary lines of business and its position as the largest merchant acquirer, and despite the fact that it purchased a small provider of U.S. POS terminals, First Data's sales are limited entirely to customers using its own network and First Data therefore has a very minimal ability to further expand its presence in the countertop POS terminals market. Smaller merchant processors would have less incentive and ability than First Data to place their own terminals on their network simply as a result of their significantly smaller volume of sales. First Data has no significant presence in the multi-lane POS terminals market.

37. Even after First Data entered the market, VeriFone's CEO expressed the view that the overall POS terminals business was likely to continue to consolidate until it was controlled by a duopoly consisting solely of VeriFone and Ingenico. Hypercom's statements regarding the difficulty of entry that are quoted in paragraph 36 were also made after First Data's entry.

38. Ingenico, an otherwise significant competitor in the POS terminals markets around the world, has faced significant difficulty in entering and expanding in the countertop POS terminals market in the United States. Ingenico has itself explained to investors that the POS terminals industry is ''highly concentrated,'' has ''consolidated in recent years,'' and is characterized by ''high barriers to entry.'' Ingenico has detailed a number of these entry barriers, including the need to obtain certifications, the ''[c]onstant intensification of the Global Card Regulation over the last 10 years,'' and the importance of ''[s]cale,'' ''[p]roximity,'' and a ''[p]ortfolio of customer application[s].'' These barriers to entry have affected Ingenico's ability to expand in the countertop POS terminals market.

39. The countertop and multi-lane POS terminals markets are characterized by a number of common barriers to entry, including those identified above. Amongst the most significant other general entry barriers are the importance of reputation and a proven track record of success serving customers generally and certain types of customers in particular. Customers are reluctant to entrust their sales process to a company without the proven ability to operate in their type of environment, especially since service and software maintenance are critical factors in the decision-making process.

40. In addition, a new producer's countertop POS terminals must be certified to work with the various payment processors in order for the processor to be willing to fully support that producer's terminals. This certification is costly and time-consuming, and payment processors are unlikely to prioritize the terminals of a new company with no committed customers. Without this certification, it is very difficult for a producer to sell a significant number of countertop POS terminals.

41. In the multi-lane POS terminals market, new entrants face an additional entry barrier relating to the need to demonstrate that a terminal can interoperate with the electronic cash register and integrated payment system used by each potential customer. As there are a range of integrated systems on the market and their providers are again unlikely to spend significant effort to work with a fledgling company with no customer base, new entrants face an uphill challenge. Even if a new entrant has a device with features comparable to those of VeriFone, Hypercom, and Ingenico, at an attractive price point, the consumer may not even consider bids from the company if it cannot demonstrate that its terminal already works with the integrated system used by that consumer.

2. Efficiencies

42. The anticompetitive effects of the proposed transaction are not likely to be eliminated or sufficiently mitigated by any efficiencies that may be achieved by the proposed transaction.

V. Violation Alleged

43. The United States incorporates the allegations of paragraphs 1 through 42 above.

44. The proposed acquisition of Hypercom by VeriFone likely would substantially lessen competition in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, in that:

a. Actual and potential competition between VeriFone and Hypercom in the sale of countertop and multi-lane POS terminals in the United States would be eliminated; and

b. competition in the sale of countertop and multi-lane POS terminals in the United States likely would be lessened substantially.

VI. Relief Requested

45. The United States requests that:

a. The proposed acquisition of Hypercom by VeriFone be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

b. VeriFone and Hypercom be enjoined from carrying out the proposed acquisition of Hypercom by VeriFone or carrying out any other agreement, understanding, or plan by which VeriFone and Hypercom would acquire, be acquired by, or merge with each other, in whole or in part;

c. The United States be awarded their costs of this action; and

d. The United States receive such other and further relief as the case requires and the Court deems just and proper.

Dated: June 15, 2011.

Respectfully submitted,

For Plaintiff United States.

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Assistant Attorney General.

Joseph F. Wayland,
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Patricia A. Brink,
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James J. Tierney (DC Bar #434610),
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In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Verifone Systems, Inc.,* and *Hypercom Corporation,* Defendants.
Case: 1:11–cv–00887.
Assigned to: Kessler, Gladys.
Assign. Date: 5/12/2011.
Description: Antitrust.

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of This Proceeding

On November 17, 2010, VeriFone Systems, Inc. (''VeriFone'') entered into a $485 million merger agreement to acquire Hypercom Corporation (''Hypercom'') that would combine two of only three significant sellers of Point of Sale (''POS'') terminals in the United States. On April 1, 2011, VeriFone and Hypercom entered into an agreement whereby Hypercom's United States POS business would be licensed to Ingenico S.A. (''Ingenico''), the only other substantial provider of POS terminals. The United States filed a civil antitrust Complaint on May 12, 2011, seeking to enjoin VeriFone's proposed acquisition of Hypercom and the related licensing agreement with Ingenico because the likely effect of the transactions would be to lessen competition substantially for POS terminals in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition likely would result in less innovation and higher prices for POS terminals. On May 19, 2011, Defendants announced they would abandon the agreement to license certain Hypercom assets to Ingenico. Therefore, the United States filed an Amended Complaint on June 22, 2011 to dismiss Ingenico as a defendant in this matter

On August 4, 2011, the United States filed a Hold Separate Stipulation and Order (''Hold Separate'') and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition in the United States. Under the proposed Final Judgment, which is explained more fully below, VeriFone and Hypercom are required to divest Hypercom's entire business engaged in the development, production, distribution, and sale of POS terminals in the United States (hereafter, the ''Divestiture Assets''). Under the terms of the Hold Separate, VeriFone and Hypercom will take certain steps to ensure that the Divestiture Assets are operated as a competitive independent, economically viable and ongoing business that will remain independent and uninfluenced by the consummation of the acquisition, and that competition is maintained during the pendency of the ordered divestiture.

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

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

A. The POS Terminal Industry

POS terminals enable retailers and other firms to accept a wide range of non-cash payment types, such as credit cards and debit cards, at millions of locations nationwide. Given the increasing popularity of electronic payments, the vast majority of merchants need to accept non-cash payment options and use POS terminals to handle on-site electronic payments. POS terminals can be operated as standalone machines, commonly referred to in the industry as ''countertop'' machines, or connected to an electronic cash register or similar device as part of an integrated point of sale system, commonly referred to in the industry as ''multi-lane'' machines.

Countertop POS terminals can be connected to payment networks by a standard telephone line, by wired or wireless Internet protocol technologies, or cellular networks. Countertop POS terminals are typically sold to small- or medium-sized businesses or retailers to enable them to accept credit and debit cards.

Multi-lane POS terminals are connected to an electronic cash register or similar device as part of an integrated point of sale system. POS terminals of this type are typically used by large retailers such as a multi-lane retail merchant or department store to accept credit and debit cards.

B. The Defendants and the Proposed Transaction

VeriFone, a Delaware corporation, is the leading seller of both countertop and multi-lane POS terminals in the United States. VeriFone offers POS terminals and related software designed for numerous applications, including financial, retail, petroleum, government, and healthcare. VeriFone markets dial-up, IP-enabled, and wireless POS terminals. In addition, VeriFone provides POS operating systems for its POS terminals. Merchants using VeriFone terminals vary in size and transaction volume from small, local businesses to national, multi-lane retail chains. In the fiscal year ending October 31, 2010, VeriFone earned more than $1 billion in revenues worldwide.

Hypercom, a Delaware corporation, is the third largest provider of POS terminals in the United States, with a large presence in the countertop POS terminals market and an emerging presence in the multi-lane POS terminals market. Its customers include financial institutions, electronic payment processors, transaction network operators, retailers, system integrators, independent sales organizations, and distributors. It also sells products to companies in the hospitality, transportation, healthcare, and restaurant industries. Hypercom's products include POS terminals and peripheral devices, including a range of PIN pads and keyboards, card readers, and payment controllers designed to permit the efficient integration of payment functionality in a variety of self-service environments, such as transportation ticketing, gasoline station pumps, parking machines, and general purpose kiosks. In 2010, Hypercom earned more than $450 million in revenues worldwide.

On November 17, 2010, following approximately eighteen months of negotiations, VeriFone agreed to purchase Hypercom in a $485 million deal that would combine two of only three significant sellers of POS terminals in the United States. The proposed acquisition would extend VeriFone's position as the largest seller of POS terminals in the United States. This transaction would substantially lessen competition in the market for POS terminals and is the subject of the Amended Complaint and proposed Final Judgment filed by the United States in this matter.

C. Relevant Markets

Antitrust law, including Section 7 of the Clayton Act, protects consumers from anticompetitive conduct, such as firm's acquisition of the ability to raise prices or reduce choice. Market definition assists antitrust analysis by focusing attention on those markets where competitive effects are likely to be felt. Well-defined markets encompass actors including both sellers and buyers whose conduct most strongly influences the nature and magnitude of competitive effects. To ensure that antitrust analysis takes account of a broad enough set of products to evaluate whether a transaction is likely to lead to a substantial lessening of competition, defining relevant markets in merger cases frequently begins by identifying a collection of products or set of services over which a hypothetical monopolist profitably could impose a small but significant and non-transitory increase in price.

Here, the United States's investigation revealed two distinct markets for POS terminals. The first market consists of countertop POS terminals, which are directly connected to credit card processors through a telephone line, Internet connection or cellular network. The second market consists of multi-lane POS terminals, which are integrated into a merchant's cash register and integrated point of sale system. There are no reasonable alternative payment devices to countertop or multi-lane POS terminals to which merchants could turn to defeat a price increase. Accordingly, both countertop and multi-lane POS terminals are relevant product markets.

Antitrust analysis must also consider the geographic dimensions of competition. Here, the relevant markets exist within the United States and are not affected by competition outside the United States. POS terminals sold in the United States must be customized for the demands of the United States purchaser and comply with distinct technical specifications and certifications unique to the United States. Therefore, the competitive dynamic for POS terminals market is distinctly different outside the United States.

D. Competitive Effects

The POS terminals industry in the United States is extremely concentrated, and would become substantially more so if VeriFone were to acquire Hypercom. VeriFone and Hypercom are two of only three dominant providers of POS terminals in the United States. In 2009, according to a leading market analyst report, VeriFone had a 48 percent share of the sale of all POS terminals in the United States, while Hypercom had an 18 percent share. The only other significant company to offer POS terminals in the United States is Ingenico, representing a 26 percent share of the sale of all POS terminals in the United States.

In the United States, VeriFone and Hypercom together control over 60 percent of the countertop POS terminals market. VeriFone, Hypercom and Ingenico together control well over 90 percent of the multi-lane POS terminals market in this country. Using a measure of market concentration called the Herfindahl-Hirschman Index (''HHI''), the proposed transaction would substantially increase the HHI in each relevant market in excess of the 200 points presumed to be anticompetitive under the Horizontal Merger Guidelines issued by the Department of Justice and the Federal Trade Commission.

The vigorous competition between VeriFone and Hypercom in the development, distribution and sale of countertop and multi-lane POS terminals has benefitted customers through better prices and increased innovation, quality, product variety and service. The proposed transaction would eliminate this competition between VeriFone and Hypercom and likely result in unilateral and coordinated effects. The acquisition would likely result in unilateral effects in each relevant market as VeriFone would be able to raise the price of both VeriFone and Hypercom products because it would recapture some sales that would have been lost absent the acquisition as purchasers reacted to such price increases by switching between VeriFone and Hypercom products. The elimination of Hypercom as a competitor would also reduce the number of significant competitors from three to two in the POS terminals markets, resulting in a duopoly and heightening the potential for coordinated behavior. Coordination, whether tacit or explicit, is especially likely because the acquisition would enhance each company's ability to deter competitive behavior in one market by retaliating across a range of other product and geographic markets.

The POS terminals markets are protected by high barriers to entry. These barriers include the need to obtain certifications for countertop POS terminals or the ability for the multi-lane POS terminal to work with a merchant's integrated payment system, keeping up with changing payment regulations, having sufficient scale, being in close proximity to customers, having a broad portfolio of customer applications, and the need for a reputation for reliability.

As a result of these barriers to entry, entry or expansion by any other firms into the countertop or multi-lane POS terminals markets would not be timely, likely, or sufficient to prevent the anticompetitive effects that would result from the proposed transaction.

III. Explanation of the Proposed Final Judgment

The divestiture requirement of the proposed Final Judgment will eliminate the likely anticompetitive effects of the acquisition in the development, production, distribution, and sale of POS Terminals in the United States by establishing a new, independent and economically viable competitor. The proposed Final Judgment requires defendants to divest Hypercom's entire business engaged in the development, production, distribution, and sale of POS Terminals in the United States. The assets must be divested in such a way as to satisfy the United States in its sole discretion that the operations can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant markets.

The proposed Final Judgment designates Gores as the company to which the divested assets must be sold.[2] The Final Judgment will enable Gores to become a new, independent, economically viable competitor in the sale of POS Terminals in the United States. In addition to defining the assets to be divested to Gores, the Final Judgment requires VeriFone to (1) license the intellectual property necessary to compete in the provision of POS Terminals in the United States to Gores; (2) provide access to Hypercom employees; and (3) provide transitional support to Gores.

The United States typically requires that ownership of intellectual property is divested to the acquirer and if required a license to the intellectual property is granted back to the seller.

[2] The Hold Separate requires that until the assets being divested are sold according to the terms of the Final Judgment, VeriFone and Hypercom must continue to operate their entire businesses as independent, ongoing, and economically viable businesses that are held entirely separate, distinct and apart. VeriFone and Hypercom shall not coordinate their production, marketing or terms of sales until the assets being divested are sold. It is necessary to keep Hypercom's entire business separate from VeriFone's business in the event the divested assets are not sold to Gores for any reason. If the assets are not sold to Gores, VeriFone and Hypercom will be unable to combine their operations, thus preserving Hypercom as an independent competitor in the POS Terminals markets.

The structure of the intellectual property transfer in this instance is unique due to the nature of the divestiture relative to the entire global market. VeriFone will retain ownership of Hypercom's international POS Terminals business which relies on similar, and in some instances the same, intellectual property rights relied upon in Hypercom's United States POS Terminals. Therefore, VeriFone retaining ownership of Hypercom's intellectual property and licensing those rights to Gores allows Gores to compete effectively in the United States and VeriFone to utilize the Hypercom intellectual property abroad.

The Final Judgment allows Gores access to Hypercom employees and prohibits VeriFone interfering with any negotiations by Gores to employ any current or former Hypercom employee who is responsible in any way for the design, production and sale of POS Terminals in the United States. It also requires VeriFone to waive any non-compete agreements for current and former Hypercom employees involved in the design, production or sale of POS Terminals in the United States. These provisions will provide Gores will access to the engineering and sales talent at Hypercom which will help to ensure that Gores can operate effectively as a standalone competitor to VeriFone.

Gores may require assistance in transitioning the databases, software, and technical support that relates to the divested assets and may require time to develop their own capabilities to manage these items on a ongoing bases. Therefore, the Final Judgment allows for Gores to enter into a transitional support agreement for up to one year after the sale of the divestiture assets. These transition services will enable Gores to compete effectively in providing POS Terminal in the United States. In addition, the Final Judgment forecloses VeriFone from taking any action to impede the operation of the transitional support services agreement.

Gores, a privately held acquisition and management company, is well suited to acquire the divestiture assets. Gores specializes in acquiring technology organizations and managing them for growth and profitability. In addition, it has experience in the POS Terminal industry. In 2001, Gores purchased VeriFone from Hewlett-Packard Company. Gores and another firm recapitalized VeriFone, focused the company on its POS Terminals products and services, and made VeriFone a profitable company. In 2005, VeriFone launched an initial public offering and became an independent company. Given Gores' financial resources, management expertise and POS Terminals industry knowledge, Gores is well positioned to successfully compete with the merged firm in the development, production, distribution, and sale of POS Terminals in the United States

In the event that Defendants do not accomplish the divestiture to Gores as prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. If a trustee is appointed the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the development, production, distribution, and sale of POS terminals in the United States.

IV. Remedies Applicable to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in Federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Applicable For Approval Or Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States, 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 and published in the **Federal Register**.

Written comments should be submitted to: James J. Tierney, Chief, Networks & Technology Enforcement Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530.

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

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, seeking preliminary and permanent injunctions against Defendants' transaction and proceeding to a full trial on the merits. The United States is satisfied, however, that the relief in the proposed Final Judgment will preserve competition in the markets for countertop and multi-lane POS Terminals. Thus, the proposed Final Judgment would protect competition as effectively as would any remedy available through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The Clayton Act, as amended by the APPA, 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.'' 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 United States 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 (DC 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. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable'').[1]

Under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. 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; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held 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] 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 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. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

In addition, ''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 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). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged.''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d. at 1459–60. Courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' SBC *Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). This language effectuates what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 *Cong. Rec.* 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the Court, with the recognition that the

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

[2] *Cf.* BNS, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (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.' '').

court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3]

VIII. Determinative Documents

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

Dated: August 4, 2011.

Respectfully submitted,

For Plaintiff, United States of America.

Ryan Struve,

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In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Verifone Systems, Inc.*, and *Hypercom Corporation*, Defendants.

Case: 1:11–cv–00887.
Assigned to: Kessler, Gladys.
Assign. Date: 5/12/2011.
Description: Antitrust.

Proposed Final Judgment

Whereas, Plaintiff United States of America (''United States'') filed its Amended Complaint on June 22, 2011, the United States and Defendants VeriFone Systems, Inc. and Hypercom Corp., by their respective attorneys, have consented to 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 the 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, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Amended 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 to this action. The Amended 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 the Final Judgment:

A. ''Acquirer'' means Gores or a buyer designated by a trustee to whom Defendants shall divest the Divestiture Assets.

B. ''Defendants'' means VeriFone and Hypercom, as defined below, and any successor or assign to all or substantially all of the business or assets of VeriFone or Hypercom involved in the provision of Point of Sale Terminals.

C. ''Divestiture Assets'' means Hypercom's entire business engaged in the development, production, distribution, and sale of POS Terminals in the United States, including, but not limited to:

1. All facilities used in the operation of Hypercom's United States POS Terminal business, including Hypercom's repair facility located in Delegacion Benito Juarex, Mexico.

2. All existing inventory of Hypercom's POS Terminal devices including parts.

3. All tangible assets used to operate the Divestiture Assets, including, but not limited to, all research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies and other tangible property; all licenses, permits and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, relating to the Divestiture Assets, including supply agreements and current POS Terminal certifications; all customer lists, customer contracts, accounts, and credit records; all repair and performance records and all other records relating to the Divestiture Assets.

4. Irrevocable, exclusive, transferable, fully paid, royalty free, non-sub licensable license to all patents and other intangible assets related to the development, production, distribution, and sale of POS Terminals in the United States, including, but not limited to, all licenses and sublicenses, software and hardware intellectual property, copyrights, trademarks, trade names, service marks, service names, 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 relating to the Divestiture Assets, 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 Divestiture Assets, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments.

5. In the event that a trustee is appointed, the trustee may, at the trustee's sole discretion, include any assets, including tangible assets as well as patents and other intangible assets that extend beyond the United States, if the trustee finds it necessary to enable the Acquirer to compete effectively in the POS Terminals Industry in the United States and accomplish the divestiture of Hypercom's POS Terminals business.

D. ''Gores'' means The Gores Group, LLC., with headquarters in Los Angeles, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. ''Hypercom'' means Defendant Hypercom Corp., a Delaware corporation, with headquarters in Scottsdale, Arizona, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

[3] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent 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.''); S. Rep. No. 93–298, 93d Cong., 1st Sess., 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.'').

F. ''Gores'' means The Gores Group, LLC., with headquarters in Los Angeles, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

G. ''Point of Sale (POS) Terminals'' means devices that enable retailers and other firms to accept a wide range of non-cash payment types, such as credit cards and debit cards. POS Terminals can operate on a standalone basis or be connected to an electronic cash register or similar device as part of an integrated point of sale system. Standalone POS Terminals are commonly referred to in the industry as ''countertop'' machines. Integrated POS Terminals are commonly referred to in the industry as ''multi-lane'' or ''customer facing.''

H. ''POS Terminals Industry'' means the market for POS Terminals including countertop and integrated POS Terminals.

I. ''Transaction'' means VeriFone's proposed merger with Hypercom.

J. ''VeriFone'' means Defendant VeriFone Systems, Inc., a Delaware corporation, headquartered in San Jose, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

III. Applicability

A. This Final Judgment applies to Defendants, 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. If, prior to complying with Section IV and V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the acquirers of the assets divested pursuant to this Final Judgment.

IV. Divestiture

A. Defendants are ordered and directed, within twenty (20) calendar days after the Court signs the Hold Separate Stipulation and Order in this matter, to divest the Divestiture Assets to Gores in a matter consistent with this Final Judgment.

B. Defendants will not interfere with any negotiations by the Acquirer in connection with the transfer of the Divestiture Assets to employ any Hypercom employee who is agreed to by the Acquirer and Defendants to be an employee to be transferred in connection with the divestiture of the Divestiture Assets or as specified by a trustee. Interference with respect to this paragraph includes, but is not limited to, enforcement of non-compete clauses and offers to increase salary or other benefits apart from those offered company-wide. In addition, for each employee who elects employment by the Acquirer in connection with the divestiture of the Divestiture Assets, Defendants shall vest all unvested pension and other equity rights of that employee and provide all benefits to which the employee would have been entitled if terminated without cause.

C. Defendants shall, as soon as possible, but within two business days after completion of the relevant event, notify the United States of: (1) The effective date of the Transaction and (2) the effective date of the sale of the Divestiture Assets to the Acquirer.

D. Defendants shall enter into a transitional support services agreement on customary and commercially reasonable terms and conditions for a period up to twelve (12) months from the execution date of the divestiture to enable the Acquirer to compete effectively in providing POS Terminals in the United States.

E. Defendants shall not take any action that will impede in any way the sales, operation, use or divestiture of the Divestiture Assets or the operation of the transitional support services agreement.

F. Unless the United States otherwise consents in writing to the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business, engaged in providing POS Terminals in the United States. The divestiture shall be:

1. Made to an Acquirer that, in the United States's sole judgment has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing in the business of providing POS Terminals; and

2. accomplished so as to satisfy the United States, in its sole discretion that none of the terms of the agreement between an Acquirer and Defendants give Defendants the ability 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 Effect Divestiture

A. If Defendants have not divested the Divestiture Assets as specified in Section IV, 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 divest the Divestiture Assets in a manner consistent with this Final Judgment.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. 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 effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate.

C. Subject to Section V.E 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.

D. 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 VI.

E. 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 the Divestiture Assets 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.

F. 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, including any information provided to the United States during its investigation of the Transaction related to 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.

G. 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 the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

H. If the trustee has not accomplished the divestiture ordered under this Final Judgment 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 United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement the trustee shall notify the United States and Defendants of any proposed divestiture required by Section V of this Final Judgment. 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.

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 after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer(s), any third party, and the trustee, whichever is later, the United States shall provide written notice to Defendants and the trustee, stating whether or not 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 Section V.D of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section V shall not be consummated. Upon objection by defendants under Section V.D, a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has 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 the divestiture ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Proposed Final Judgment in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, Defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, 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) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Proposed Final Judgment 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 VIII 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 keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

X. 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 authorized representatives of the United States Department of Justice Antitrust Division (''DOJ''), including consultants

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

(1) Access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or respond to written interrogatories, 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)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

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

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

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

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

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

_____

United States District Judge.

[FR Doc. 2011–20534 Filed 8–11–11; 8:45 am]

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U.S DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Management of Technical Assistance for Selected Sites in NIC's ''Evidence-Based Decision Making in Local Criminal Justice Systems'' Project

AGENCY: National Institute of Corrections, U.S. Department of Justice.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: The National Institute of Corrections (NIC) Community Services Division is soliciting proposals from organizations, groups, or individuals to enter into a cooperative agreement with NIC for up to twelve months beginning in September 2011. Work under this cooperative agreement is part of larger NIC project, ''Evidence-Based Decision Making (EBDM) in Local Criminal Justice Systems.'' Work under this cooperative agreement will be coordinated with recipients of other awards providing services under Phase III of this project.

Specifically, under this cooperative agreement, the recipient will, (1) provide technical assistance to four Phase III ''Tier II'' sites that have already been identified, and (2) provide ad hoc technical assistance to other non-EBDM sites to be determined together with the NIC staff.

DATES: Application must be received by 4 p.m. (EDT) on Wednesday, August 24, 2011. Selection of the successful applicant and notification of review results to all applicants will be made by September 15, 2011.

ADDRESSES: Mailed applications must be sent to: Director, National Institute of Corrections, 320 First Street, NW., Room 5002, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date.

Hand delivered applications should be brought to 500 First Street, NW., Washington, DC 20534. At the front desk, dial 7–3106, extension 0 for pickup.

Faxed applications will not be accepted. Electronic applications can be submitted via *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this announcement can be downloaded from the NIC Web site at *http://www.nicic.gov/cooperative agreements.* All technical or programmatic questions concerning this announcement should be directed to Lori Eville, Correctional Program Specialist, National Institute of Corrections, at *leville@bop.gov.* All questions and answers will be posted on the NIC Web site.

SUPPLEMENTARY INFORMATION:

Overview: The overall goal of the EBDM Initiative is to establish and test articulated linkages (information tools and protocols) between local criminal justice decisions and the application of human and organizational change principles (evidence-based practices) to achieve measurable reduction of pretrial misconduct and post-conviction risk or re-offending. The unique focus of the initiative is the locally developed strategies of criminal justice officials that guide practice within existing sentencing statutes and rules. The initiative intends to: (1) improve the quality of information that leads to making individual case decisions in local systems; and (2) engage these systems as policy making bodies to collectively improve the effectiveness and capacity of the decision process related to pretrial release/sentencing