

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.⁴

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.'" ⁵

This is strong and effective relief that should fully address the competitive harm posed by the proposed transactions.

VIII. Determinative Documents

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

Respectfully submitted,

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Justice, Antitrust Division, 1401 H Street,
N.W.; Suite 4000, Washington, D.C. 20530,
(202) 307-0829.

Dated: March 20, 1997.

Exhibit A—Definition of HHI and Calculations for Market

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It 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 thirty, thirty, twenty and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into

⁴ *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); see *BNS*, 858 F.2d at 463; *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette*, 406 F. Supp. at 716. See also *Microsoft*, 56 F.3d at 1461 (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'") (citations omitted).

⁵ *United States v. American Tel. and Tel Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983), quoting *Gillette Co.*, 406 F. Supp. at 716 (citations omitted); *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market increases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Merger Guidelines. See Merger Guidelines § 1.51.

Certificate of Service

I, Dando B. Cellini, hereby certify that, on March 20, 1997, I caused the foregoing document to be served on defendants EZ Communications, Inc. and Evergreen Media Corporation by having a copy mailed, first-class, postage prepaid, to:

Ray V. Hartwell, III,
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Dando B. Cellini.

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BILLING CODE 4410-11-M

United States v. Western Pine Association, et al.

Notice is hereby given that defendant Western Wood Products Association ("WWPA") has filed with the United States District Court for the Central District of California a motion to terminate the Consent Decree in *United States v. Western Pine Ass'n, et al.*, Civil Action No. 41-1389 RJ, and that the Department of Justice ("Department"), in a stipulation and order also filed with the Court, has tentatively consented to termination of the Consent Decree but has reserved the right to withdraw its consent pending receipt of public comments. The complaint in this case (filed February 6, 1941) alleged that the Western Pine Association ("WPA") and its lumber company members had curtailed output, fixed prices, and enforced arbitrary and unreasonable rules and policies for standardization and distribution of western pine lumber.

On February 6, 1941, a Consent Decree was entered against the WPA and its members which (1) required WPA to make its grading services available to both members and nonmembers alike without discrimination and at the actual cost of the services rendered and (2) contained various injunctive provisions relating to the conduct of the WPA and its members. Specifically, the Consent Decree enjoined the defendants from (1) assigning to manufacturers a maximum production figures; (2) allocating business; (3) fixing prices, discounts or commissions; (4) disseminating information concerning production, sales, or prices; (5) refusing to quote f.o.b.; and (6) restricting the sale of lumber to any particular class of customers.

The Department has lodged with the court a memorandum setting forth the reasons why the Government believes that termination of the Consent Decree would serve the public interest. Copies of WWPA's motion papers, the stipulation containing the Government's consent, the Government's memorandum and all further papers filed or lodged with the court in connection with this motion will be available for inspection at the Legal Procedure Unit of the Antitrust Division, Room 215 North, Liberty Place, Washington, D.C. 20530, and at the Office of the Clerk of the United States District Court for the Central District of California 90012. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Government. Such comments must be received by the Division with sixty (60) days and will be filed with the court by the Government. Comments should be addressed to Christopher S. Crook, Acting Chief, San Francisco Office, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, California 91402 (Telephone: (415) 436-6660).

Rebecca P. Dick,

Deputy Director of Operations.

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

Notice is hereby given that, on November 5, 1996, pursuant to Section