hands of the Secretary as soon as convenient and, in any event, not later than February 15, 2001. Those wishing to testify should contact the Secretary at the address below in writing at least 30 days before the hearing. All written comments on the proposed rule amendments should be mailed to: Peter G. McCabe, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, Washington, DC 20544.

Comments on the proposed rule amendments may also be sent electronically via the Internet at <*http://www.uscourts.gov/rules*>. In accordance with established procedures all comments submitted on the proposed amendments are available to public inspection.

The text of the proposed rule amendments and the accompanying Committee Notes can be found at the United States Federal Courts' Home Page at <*http://www.uscourts.gov/rules*> on the Internet.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: September 5, 2000.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 00–23473 Filed 9–12–00; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States of America v. Ingersoll-Dresser Pump Co., Et Al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16(b) through (h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *Ingersoll-Dresser Pump Co., Ingersoll-Rand Co., and Flowserve Corp.,* Civil Action No. 00–1818. On July 28, 2000, the United States filed a Complaint alleging that the proposed acquisition by Flowserve of Ingersoll-Dresser Pump Company would violate section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires the defendants to divest certain pump lines and manufacturing and repair facilities. Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Suite 2000, 325 Seventh Street, NW., and at the Office of the Clerk of the United States District Court for the District of Columbia.

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 Gail Kursh, Chief, Health Care Task Force, 325 Seventh Street, NW., Room 404, Antitrust Division, Department of Justice, Washington, DC 20530 (telephone: (202) 307–5799).

Constance K. Robinson,

Director of Operation and Merger Enforcement.

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin preliminarily and permanently the proposed acquisition by Flowserve Corporation (''Flowserve'') of Ingersoll-Dresser Pump Company (''IDP''), pursuant to a Purchase Agreement entered into by the defendants and dated February 9, 2000. The United States alleges as follows:

1. Unless it is enjoined, Flowserve's proposed acquisition of IDP will reduce the already small number of firms that compete on bids to sell certain costly, specialized and highly engineered pumps used in oil refineries and electrical generating facilities in the United States, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. Such a reduction in competition is likely to result in higher prices and reduced selection for those pumps.

I. Jurisdiction and Venue

2. This complaint is filed and this action is instituted under 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.

3. Each of the defendants is engaged in interstate commerce and in activities substantially affecting interstate commerce. This Court has subject matter jurisdiction over this action, and jurisdiction over the parties, pursuant to Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1331, 1337(a) and 1345.

4. Each of the defendants has consented to personal jurisdiction in the District of Columbia. Venue is proper in this District pursuant to 15 U.S.C. 22, and 28 U.S.C. 1391(c).

II. The Defendants

5. Flowserve is a New York corporation with its principal executive offices in Irving, Texas. Flowserve manufactures and sells a broad array of pumps, valves and seals used in a wide variety of manufacturing and processing industries, and provides parts and service for pumps, in the United States and abroad. Flowserve has total annual sales of over $1 billion and maintains offices and facilities at approximately 25 locations in the United States.

6. Ingersoll-Rand is a New Jersey corporation with its principal executive offices in Woodcliff Lake, New Jersey. Ingersoll-Rand is a general partner in, and controls, IDP.

7. ID is a Delaware general partnership, headquartered in Liberty Corner, New Jersey. IDP manufactures and sells a broad array of pumps, and provides service and parts for such pumps, in the United States and abroad. IDP is one of the world's largest pump manufacturers, with annual sales of over $875 million. IDP maintains offices and facilities at approximately 27 locations in the United States.

III. Background

8. Flowserve and IDP each manufacture and sell for use in the United States two categories of specialized, highly engineered pumps known as ''API 610 pumps'' and ''power plant pumps.'' API 610 pumps are used in the oil and gas industry, including in oil refineries, and power plant pumps are used in electrical generating facilities or ''power plants.''

9. API 610 pumps are specialized, rugged, highly engineered pumps that generally perform critical functions in an oil refinery, including the movement of erosive, corrosive, hot and flammable petroleum-based liquids under high pressure. API 610 pumps are designed, built, tested and shipped in accordance with comprehensive standards of the American Petroleum Institute.

10. Power plant pumps are specialized, highly engineered pumps that perform critical functions in the steam cycle of a power plant. (The steam cycle consists of a boiler or steam generator that feeds steam to a steam turbine that drives an electricity-producing generator.) The three basic categories of power plant pumps are: (1) ''Circulating water pumps,'' which deliver cooling water to condensers that condense the spent steam that has passed through a steam turbine; (2) ''condensate pumps,'' which extract the

condensed steam; and (3) ''boiler feed pumps,'' which move the condensed steam (now very hot water) back into the boiler or steam generator to make new steam.

11. Each manufacturer of API 610 and power plant pump lines offers its lines in an array of different models and sizes. The pumps within a line differ with respect to capacity and capabilities, including, for example, the number of stages, speed, efficiency, bearing type, suction and discharge pressure, head, temperature range, vapor pressure, rated gallons per minute, impeller diameter, suction nozzle size, discharge nozzle size, metallurgical properties, and motor type and size.

12. API 610 pumps and power plant pumps are sold pursuant to bids, which are based on extensive specifications from the customer. For each pump application in a given oil refinery or power plant project, the manufacturer selects a model and size pump and accessories to bid, and makes additional modifications to try to meet the customer's specifications.

13. The match between the requirements of a particular pump application, and the optimum operating range of the pump a manufacturer proposes to use for that application, is referred to as the ''fit'' of the proposed pump. A manufacturer's ability to provide an economically priced API 610 or power plant pump with a good fit is largely a function of the breadth of that manufacturer's lines of pumps and accessories.

14. Customers evaluate the competing bids, in part, on the basis of their compliance with the technical specifications that the customer had provided. For example, in addition to a manufacturer's proposed price for the required pumps, a customer may also consider how the fit of the pumps that that manufacturer proposes to use will affect the long-term operating costs of the oil refinery or power plant.

15. Customers also evaluate the commercial terms of the competing proposals, including each manufacturer's proposed price and proposed delivery dates. Delivery dates are an important aspect of the competition among API 610 and power plant pump manufacturers because the amount of time a manufacturer will require to deliver the pumps (which can vary from several months to over a year) may significantly affect the construction schedule for the project.

16. A customer that is undertaking an oil refinery or power plant construction project can avoid costly construction delays, or costly down-time in the operation of the refinery or power plant, by selecting a manufacturer that will be able to respond quickly to requests for technical information or design changes during the design phase of the project; to requests for technical assistance, modifications or repairs during the construction or commissioning phases of the project; and to requests for service or repairs during the operating life of the pumps.

17. For those reasons, customers that are planning oil refinery or power plant construction projects in the United States seek to obtain the API 610 or power plant pumps from a manufacturer that has a substantial presence in the United States, including engineering expertise, reputation and practical operating experience with the pump's application in similar facilities in the United States; parts availability in the United States; and a substantial network of service and repair facilities in the United States.

IV. Trade and Commerce

A. Relevant Product Markets

18. The combined technical and commercial needs of the customer differ markedly for each API 610 pump or power plant pump bid. A small but significant increase in the price of a product that meets the bid specifications would not cause a significant number of customers in the United States to substitute other products that do not meet those bid specifications.

19. Each bid for API 610 pumps and power plant pumps for installation in oil refineries and power generation plants in the United States is a line of commerce and relevant product market under Section 7 of the Clayton Act.

B. Relevant Geographic Market

20. Those competitors that could constrain Flowserve and IDP from raising prices on bids for API 610 pumps and power plant pumps for installation in oil refineries and power generation plants, respectively, in the United States are API 610 and power plant pump manufacturers with a substantial physical presence in the United States.

21. Customers installing these pumps in the United States prefer domestic pump suppliers because reputation is important, as is the ability to provide quick and reliable servicing with parts availability and to avoid shipping costs and delays. In addition, with minor exceptions, only domestic manufacturers have an installed base of pumps in the United States, thus allowing customers to more readily observe and evaluate the operation and reliability of the pump in comparable applications. Moreover, pumps manufactured abroad may cost more than comparable pumps manufactured in the United States.

22. The relevant geographic market for analyzing the proposed acquisition under Section 7 of the Clayton Act is the United States.

V. Market Structure and Anticompetitive Effects

23. Based on capabilities and bidding history, there are only four credible competitors, including Flowserve and IDP, that might bid on a large majority of bids for API 610 pumps for oil refinery projects in the United States.

24. Based on capabilities and bidding history, there are only four credible competitors, including Flowserve and IDP, that might bid on a large majority of bids for circulating water pumps for power plant construction projects in the United States.

25. Based on capabilities and bidding history, there are only three credible competitors, including Flowserve and IDP, that might bid on a large majority of bids for condensate pumps for power plant construction projects in the United States.

26. Based on capabilities and bidding history, there are only four credible competitors, including Flowserve and IDP, that might bid on a large majority of bids for boiler feed pumps for power plant construction projects in the United States.

27. Although each bidder for API 610 pumps and power plant pumps may be familiar with its competitors, it does not know with any degree of certainty the commercial or technical terms of its competitors' bids prior to submitting its own bid. That uncertainty restrains bidders' pricing. By eliminating IDP, one of Flowserve's few, significant competitors. Flowserve would be able to increase its bid without increasing the probability it would lose the bid. Similarly, the few remaining bidders could also increase their bids without increasing their risk losing. Thus, the acquisition of IDP by Flowserve creates an incentive for each bidder to bid a higher amount than it would have were IDP still a competitor.

28. Due to the broad range of pumps IDP and Flowserve offer, their overall expertise in meeting the API 610 and power plan pump needs of customers, the fit offered by their pumps, their ability to meet delivery time frames, their aftermarket parts and service availability, and other technical and commercial factors, IDP and Flowserve are frequently perceived by each other,

by other bidders, and by customers as being close or strong competitors and having a significant probability of winning a given bid.

29. The magnitude of the anticompetitive effect from the proposed acquisition will be greater the more that IDP and Flowserve view each other as close or strong competitors, and other rivals view IDP as a major competitive factor.

30. United States' oil refineries and power generators have benefitted from this competition through lower prices and greater choice. The combination of IDP and Flowserve will eliminate this competition, and the customers' benefits from this competition.

VI. The Likely Anticompetitive Effects of the Proposed Acquisition Will Not Be Eliminated by Entry

31. Substantial, timely entry of additional competitors is unlikely and, therefore, will not restrain any price increases caused by the elimination of IDP as a bidder.

32. Entry by a firm that does not currently manufacture API 610 pumps or power plant pumps would be extraordinarily difficult, costly, time consuming and financially risky; hence, such entry is highly unlikely.

33. To compete effectively, a new firm would need to offer an array of API 610 or power plant pump models. The design, production and testing of a single model of such a pump can take several years, and would require the expenditure of substantial sunk costs, as would the establishment of an engineering, parts and service network. To develop an array of pumps would further increase that time and cost.

34. Timely, substantial entry by an existing manufacturer of API 610 or power plant pumps that does not currently sell those pumps for installation in United States' oil refineries or power plants is unlikely. Such a firm could not effectively compete for sales of API 610 or power plant pumps unless it first established, in the United States, a substantial contingent of engineering personnel; a local availability of spare parts; and a substantial network of service and repair facilities. Moreover, many oil refineries and power plants will not purchase pumps from a supplier that has not demonstrated, in the United States, the reliability and efficiency of its pumps and the expertise of its engineers in the particular use for which the pump is being sought. This process can take years and the expenditure of substantial sunk costs.

VII. Violation Alleged

35. Flowserve's acquisition of IDP may substantially lessen competition on a significant number of bids for the sale of API 610 pumps used in oil refineries in the United States and power plant pumps used in power plants in the United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

36. The acquisition will have the following effects, among others:

(a) Actual and potential competition between IDP and Flowserve will be eliminated;

(b) Competition generally in the manufacture, marketing and sale of API 610 pumps and power plant pumps will be lessened substantially; and

(c) Prices of API 610 pumps and power plant pumps will increase, and innovation in the development of these pumps will decrease.

VIII. Requested Relief

Wherefore, plaintiff, the United States of America, requests a judgment:

(a) That the proposed acquisition of IDP by Flowserve be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. 18;

(b) That defendants and all persons acting on their behalf be preliminarily and permanently restrained and enjoined from implementing the February 9, 2000 Purchase Agreement or any other agreement of like intent or effect;

(c) That plaintiff be awarded its costs of this action; and

(d) That plaintiff be granted such other and further relief as the Court may deem proper.

Respectfully submitted,

Joel I. Klein,
Assistant Attorney General.

Donna E. Patterson,
Deputy Assistant Attorney General.

Constance K. Robinson,
Director of Operations and Merger Enforcement.

Gail Kursh,
Chief, Health Care Task Force.

David C. Jordan,
Assistant Chief, Health Care Task Force.

Arnold C. Celnicker,
Georgia Bar No. 118050.

Steven Brodsky,
D.C. Bar No. 91470.

Justin M. Dempsey,
D.C. Bar No. 425976.

Trial Attorneys, U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Suite 400, Washington, DC 20530, (202) 305–7498.

Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. Definitions

As used in this Hold Separate Stipulation and Order.

A. ''Acquirer(s)'' means the entity or entities to whom defendants divest the Divestiture Assets.

B. ''Divestiture Assets'' means the ''Divestiture Plant,'' ''Divestiture Pump Lines,'' and ''Divestiture Repair Facilities,'' as defined below.

C. ''Divestiture Plant'' means Flowserve's pump plant in Tulsa, Oklahoma, including manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property used in connection with the manufacturer of the SCE, VLT, VMT and HQ pump lines; manufacturing equipment and tooling dedicated to the production of the J and CGT pump lines and located in IDP's pump plant in Phillipsburg, New Jersey, all contracts, agreements, leases, commitments, certifications, and understandings, relating to the Divestiture Plant, including supply agreements; and all licenses, permits and authorizations issued by any governmental organization relating to the Divestiture Plant.

D. ''Divestiture Pump Lines'' means Flowserve's SCE, VLT, VMT, HQ, HX and WX (excluding the 93 inch size of the WX) pump lines, including parts for said lines, and IDP's and J and CGT pump lines, including parts for said lines, and also including all customer lists, contracts, accounts, credit records, repair and performance records and all other records relating to said pump lines; and all intangible assets used in the development, production, servicing and sale of Divestiture Pump Lines, including, but not limited to all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names (excluding names and marks that relate to the corporate owner of said pump lines such as ''Flowserve'' and ''IDP,'' and predecessor acquired companies), 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, quality assurance and control procedures, molds, patterns and design tools, manuals and technical information defendants provide to their own employees, customers, suppliers, agents or licensees, and research and

development activities and data concerning historic and current research and development efforts including, but not limited to, designs of possible modifications or improvements, relating to said pump lines.

E. ''Divestiture Repair Facilities'' means the IDP service centers in Batavia, Illinois and La Mirada, California, including production, repair and service equipment at said facilities.

F. ''Flowserve'' means defendant FLOWSERVE CORPORATION, a New York corporation with its headquarters in Irving, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

G. ''IDP'' means defendant INGERSOLL-DRESSER PUMP COMPANY, a Delaware general partnership with its headquarters in Liberty Corner, New Jersey, its successors and assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

H. ''Tulsa Plant'' means Flowserve's pump plant in Tulsa, Oklahoma, including manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property used in connection with the manufacture of the SCE, VLT, VMT and HQ pump lines; and excluding dedicated manufacturing equipment and tooling inventory, materials and supplies not used in connection with the manufacture of the SCE, VLT, VMT and HQ pump lines.

II. Objectives

The proposed Final Judgment filed in this case is meant to ensure defendants' prompt divestitures Assets for the purpose of establishing one or more viable competitors in the production and sale of certain types of centrifugal pumps used in oil refineries (hereinafter ''API pumps'') and certain power plant pumps used in combined cycle, co-generation and solid fuel power plants (hereinafter ''power plant pumps'') in order to remedy the effects that the United States alleges would otherwise result from Flowserve's acquisition of IDP. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that the Divestiture Assets remain independent, economically viable, and ongoing business assets that will remain independent and uninfluenced by defendants except as stated herein, and that competition is maintained during the pendency of the ordered divestitures.

III. Jurisdiction and Venue

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV. Compliance with and Entry of Final Judgment

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Hold Separate Stipulation and Order by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Hold Separate Stipulation and Order shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Hold Separate Stipulation and Order, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, or (3) Flowserve fails to acquire IDP and certifies to the United States in writing that Flowserve will not seek to acquire IDP without first filing a new pre-merger notification under the Hart-Scott-Rodino Act, then the parties are released from all further obligations under this Hold Separate Stipulation and Order, and the making of this Hold Separate Stipulation and Order shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V. Hold Separate Provisions

Until the divestitures required by the proposed Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and continue to operate the Tulsa Plant as an independent, ongoing, economically viable competitive business unit, with management and operations of the Tulsa Plant held entirely separate, distinct and apart from those of defendants' other operations. Defendants shall not coordinate its production, marketing, or terms of sale of any products with those produced by the Tulsa Plant except as necessary to effectuate the terms of the Hold Separate Stipulation and Order and the proposed Final Judgment. Within twenty (20) days after the entry of the Hold Separate Stipulation and Order, defendants will inform the United States of the steps defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that (1) the Tulsa Plant will be maintained and operated as an independent, ongoing, economically viable and active competitive buisness unit in the API pumps and power plant pumps businesses; (2) management of the Tulsa Plant will not be influenced by defendants except to the extent required herein; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning production, distribution or sales of products from the Tulsa Plant will be kept separate and apart from defendant Flowserve's other operations.

C. Defendants shall use all reasonable efforts to maintain the increase the sales and revenues of the Divestiture Pump Lines. Defendants shall not alter the commissions, incentives or compensation of sales personnel in any way that might negatively impact sales of the Divestiture Pump Lines.

D. Defendants shall provide sufficient working capital and lines and sources of credit to continue to maintain the Tulsa

Plant as an economically viable and competitive, ongoing business unit, consistent with the requirements of Sections V (A) and (B).

E. Defendants shall take all steps necessary to ensure that the Tulsa Plant is fully maintained in operable condition at no less than its current capacity and sales, and shall maintain and adhere to normal repair and maintenance schedules for the Tulsa Plant.

F. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Divestiture Assets.

G. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Divestiture Assets.

H. Defendants' employees with primary responsibility for the production and sale of the Divestiture Pump Lines at the Tulsa Plant shall not be transferred or reassigned to other areas within the company except for transfers initiated by employees. Defendant shall provide the United States with ten (10) calendar days notice of such transfer.

I. Defendants shall appoint persons to oversee the Divestiture Assets, subject to the approval of the United States, and who will be responsible for defendants' compliance with this section. These persons shall have complete managerial responsibility for the Divestiture Assets, subject to the provisions of this proposed Final Judgment. In the event such a person(s) is unable to perform his duties, defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should defendants fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement at the expense of the defendants.

J. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the proposed Final Judgment to complete the divestiture pursuant to the Final Judgment to Acquirer(s) acceptable to the United States.

K. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestitures required by the proposed Final Judgment or until further order of the Court.

Dated: July 28, 2000

Respectifully submitted,

For Plaintiff, United States of America:
Arnold C. Celnicker,
Georgia Bar No. 118050, U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Suite 400, Washington, DC 20530, (202) 305–7498.

For Defendant, Ingersoll–Dresser Pump Company:
David I. Gelfand,
D.C. Bar No. 416596,
Mark W. Nelson,
D.C. Bar No. 442461, Cleary, Gottlieb, Steen & Hamilton, 2000 Pennsylvania Ave., N.W., Washington, D.C. 20006–1801, (202) 974–1500.

For Defendant, Flowserve Corporation:
Stephen J. Marzen,
D.C. Bar No. 413164, Shearman & Sterling, 801 Pennsylvania Ave., N.W., Suite 900, Washington, D.C. 20004–2604, (202) 508–8174.

For Defendant, Ingersoll-Rand Company:
David I. Gelfand,
D.C. Bar No. 416596, Mark W. Nelson,
D.C. Bar No. 442461, Cleary Gottlieb, Steen & Hamilton, 2000 Pennsylvania Ave., N.W., Washington, D.C. 20006–1801, (202) 974–1500.

Order

It Is So Ordered by the Court, this 28th day of July, 2000.

Judge Ellen S. Huvelle, for
Judge Jackson, United States District Judge.

Final Judgment

Whereas, plaintiff, United States of America, filed its Compliant on July 28, 2000, plaintiff and defendants by their respective attorneys, have consented to the entity of this Final Judgment without trial or adjudication of any issue of fact or law, and within this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law

And Whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essense of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the defendants to assure that competition is not substantially lessened.

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

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

Now Therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *Ordered, Adjudged and Decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of, and each of the parties to, this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. ''Acquirer(s)'' means the entity or entities to whom defendants divest the Divestiture Assets.

B. ''Flowserve'' means defendant **Flowserve Corporation**, a New York corporation with its headquarters in Irving, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''IDP'' means defendant **Ingersoll-Dresser Pump Company**, a Delaware general partnership with its headquarters in Liberty Corner, New Jersey, its successors and assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''I–R'' means defendant **Ingersoll-Rand Company**, a New Jersey corporation with its principal executive offices in Woodcliff Lake, New Jersey, its successors and assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

E. ''Divestiture Assets'' means the ''Divestiture Plant,'' ''Divestiture Pump Lines,'' and ''Divestiture Repair Facilities,'' as defined below.

F. ''Divestiture Plant'' means Flowserve's pump plant in Tulsa, Oklahoma, including manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property used in connection with the manufacture of the SCE, VLT, VMT and HQ pump lines; manufacturing equipment and tooling dedicated to the production of the J and CGT pump liens and located in IDP's pump plant in Phillipsburg, New Jersey; all contracts, agreements, leases, commitments, certifications, and understandings, relating to the Divestiture Plant, including supply

agreements; and all licenses, permits and authorizations issued by any governmental organization relating to the Divestiture Plant.

G. ''Divestiture Pump Lines'' means Flowserve's SCE, VLT, VMT, HQ, HX and WX (excluding the 93 inch size of the WX) pump lines, including parts for said lines, and IDP's J and CGT pump lines, including parts for said lines; and also including all customer lists, contracts, accounts, credit records, repair and performance records and all other records relating to said pump lines; and all intangible assets used in the development, production, servicing and sale of Divestiture Pump Lines, including, but not limited to all patents, licenses, and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names (excluding names and marks that relate to the corporate owner of said pump lines such as ''Flowserve,'' ''I–R'' and ''IDP,'' and predecessor acquired companies), 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, quality assurance and control procedures, molds, patterns and design tools, manuals and technical information defendants provide to their own employees, customers, suppliers, agents or licensees, and research and development activities and data concerning historic and current research and development efforts, including, but not limited to, designs of possible modifications or improvements, relating to said pump lines.

H. ''Divestiture Repair Facilities'' means the IDP service centers in Batavia, Illinois and La Mirada, California, including production, repair and service equipment at said facilities.

III. Applicability

A. This Final Judgment applies to IDP, I–R and Flowserve, 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. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, that the Acquirer(s) agrees to be bound by the provisions of this Final Judgment.

IV. Divestitures

A. Defendants are ordered and directed to divest, in a manner consistent with this Final Judgment, to an Acquirer(s) acceptable to the United States in its sole discretion:

1. A perpetual, royalty-free, assignable, transferable license(s) to manufacture the Divestiture Pump Lines, including the exclusive right to sell the Divestiture Pump Lines for installation within the United States and a nonexclusive right to sell the Divestiture Pump Lines for installation in the rest of the world; provided, however, that Flowserve may continue to sell the SCE pump line and parts to its alliance customers Shell and Mobil for a period up to ten (10) years from entry of this Final Judgment for installation within the United States, and Flowserve may continue to sell parts for the J and VLT pump lines to its alliance customers Shell and Mobil for a period up to five (5) years from entry of this Final Judgment for installation within the United States; and

2. The Divestiture Plant and the Divestiture Repair Facilities.

B. Defendants must make the above divestitures within one hundred fifty (150) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later. The United States, in its sole discretion, may agree to an extension of this period of up to thirty (30) days, and shall notify the Court in such circumstance. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

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

D. Defendants shall provide the Acquirer(s) and the United States information relating to the personnel whose primary responsibilities include the production, development and sale of the Divestiture Pump Lines to enable the Acquirer(s) to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer(s) to employ any defendant employee whose primary responsibility is the production, development and sale of the Divestiture Pump Lines.

E. Defendants shall permit prospective Acquirer(s) of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Divestiture Plant; to have access to any and all environmental, zoning, and other permit documents and information; and to have access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. Defendants shall warrant to all Acquirer(s) of the Divestiture Assets that each asset will be operational on the date of sale.

G. Defendants shall take no action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

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

I. Unless the United States otherwise consents in writing, the divestitures 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(s) as part of a viable, ongoing business of manufacturing and selling the Divestiture Pump Lines to customers, including those in the petroleum and power generation industries in the United States. Divestiture of the Divestiture Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The

divestitures, whether pursuant to Section IV or Section V of this Final Judgment.

1. Shall be made to an Acquirer(s) that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the business of manufacturing and selling the Divestiture Pump Lines to customers, including those in the petroleum and power generation industries in the United States; and

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

V. Appointment of Trustee

A. If defendants have not divested the Divestiture Assets within the time specified in Section IV(B), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestitures of the Divestiture Assets.

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 divestitures to an Acquirer(s) 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 Section IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire, at the cost and expense of defendants, any investment bankers, attorneys, and other agents, who shall be solely accountable to the trustee, and reasonably necessary in the trustee's judgment to assist in the divestitures.

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

D. The trustee shall serve at the cost and expenses of defendants, on such terms and conditions as the plaintiff approved, 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 divestitures and the speed with which they are accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secrets 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 divestitures.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in 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.

G. If the trustee has not accomplished such divestitures within six 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 divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the plaintiff, who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it deems 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, defendants or the trustee, whichever is then responsible for effecting the divestitures required herein, shall notify the United States of any proposed divestitures required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestitures and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer(s), any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer(s), and any other potential Acquirer(s). 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, if there is one, stating whether it objects to the proposed divestitures. If the United States provides written notice that it does not object, the divestitures may be consummated, subject only to defendants' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture

proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Section V(C), 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 divestitures required by this Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestitures ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestitures have 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 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 purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitation on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section 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 divestitures have 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 duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistance 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 plantiff's option demand defendants provide copies of, all books, ledgers, accounts, records and documents in the possession or control of defendants, who may have counsel present, 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 interviewees' reasonable convenience and without restraint or interference by defendants.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give defendants ten (10) calendar days 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.

Date: _____

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

_____

United States District Judge

Certificate of Service

I hereby certify that on this day of July 28, 2000, I caused a copy of the Complaint, the Hold Separate Stipulation and Order and the proposed Final Judgment to be served by U.S. First Class Mail or overnight delivery upon:

Stephen J. Marzen, Shearman & Sterling, 801 Pennsylvania Ave., N.W., Suite 900, Washington, D.C. 20004–2604, (202) 508–8174, Attorney for Flowserve Corporation

David I. Gelfand, Mark W. Nelson, Cleary, Gottlieb, Steen & Hamilton, 2000 Pennsylvania Ave., N.W., Washington, D.C. 20006–1801, (202) 974–1500, Attorneys for Ingersoll-Dresser Pump Company and Ingersoll-Rand Company

Arnold C. Celnicker,

Trial Attorney, Georgia Bar No. 118050, U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Suite 400, Washington, DC 20530, (202) 305–7498.

Competitive Impact Statement

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

I. Nature and Purpose of the Proceeding

On July 28, 2000, the United States filed a civil antitrust suit alleging that an acquisition by Flowserve Corporation (''Flowserve'') of Ingersoll-Dresser Pump Company (''IDP'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that Flowserve's proposed acquisition of IDP would reduce the already small number of firms that compete on bids to sell certain costly, specialized and highly engineered pumps used in oil refineries and electrical generating facilities in the United States. According to the Complaint, such a reduction in competition would likely result in higher prices and reduced selection for those pumps. The prayer for relief in the Complaint seeks a judgment that the proposed acquisition would violate Section 7 of the Clayton Act, a permanent injunction that would prevent Flowserve from acquiring IDP, that the United States be awarded costs, and other relief that the Court deems just and proper.

At the same time the Complaint was filed, the United States also filed a proposed settlement that would permit Flowserve to complete its acquisition of IDP, yet preserve competition in the markets in which the transaction would otherwise raise significant competitive concerns. The settlement consists of a proposed Final Judgment and a Hold Separate Stipulation and Order. In essence, the Hold Separate Stipulation and Order would require Flowserve to maintain certain pump lines, and associated production assets, as economically viable, ongoing concerns, operated independently of Flowserve's other businesses until the divestitures mandated by the Final Judgment have been accomplished.

The proposed Final Judgment orders defendants to divest to one or more acquirers a perpetual, royalty-free, assignable, transferable license to manufacture and sell Flowserve's SCE, VLT, VMT, HQ, HX and WX pump lines, and IDP's J and CGT pump lines; Flowserve's pump plant in Tulsa, Oklahoma; and the IDP service centers in Batavia, Illinois and La Mirada, California. Defendants must complete these divestitures within 150 days after filing of the Complaint, or five days after entry of the Final Judgment, whichever is later. If they do not complete the divestitures within the prescribed time, the Court will appoint a trustee to sell the assets.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (''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 violations thereof.

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

A. The Defendants and the Proposed Transaction

Flowserve is a New York corporation with its principal executive offices in Irving, Texas. Flowserve manufactures and sells a broad array of pumps, valves and seals used in a wide variety of manufacturing and processing industries, and provides parts and service for pumps, in the United States and abroad. Flowserve has total annual sales of over $1 billion and maintains offices and facilities at approximately 25 locations in the United States.

Ingersoll-Rand Company (''I–R'') is a New Jersey corporation with its principal executive offices in Woodcliff Lake, New Jersey. I–R is a general partner in, and controls IDP. IDP is a Delaware general partnership, headquartered in Liberty Corner, New Jersey. IDP manufactures and sells a broad array of pumps, and provides service and parts for such pumps, in the United States and abroad. IDP is one of the world's largest pump manufacturers, with annual sales of over $875 million. IDP maintains offices and facilities at approximately 27 locations in the United States.

On February 9, 2000, Flowserve agreed to acquire IDP for about $775 million. This proposed transaction, which would combine Flowserve and IDP and substantially lessen competition in the sale of certain types of pumps, precipitated the government's antitrust suit.

B. The Competitive Effects of the Transaction

1. API 610 Pumps and Power Plant Pumps. The petroleum industry is a major purchaser of pumps for hundreds of applications. The American Petroleum Institute (''API''), the petroleum industry trade organization, sets voluntary standards for pumps used in petroleum applications. The standards for centrifugal pumps are API Standard 610. A large refinery will have over a thousand pumps, and most meet API 610 standards. The standards detail not only the design of the pumps, but also the accessories used with the pump (*e.g.,* drivers, couplings, mounting plates), the inspection, testing and shipment of the pumps, and the information that must be included in bids and contracts. API 610 pumps are designed to withstand extreme conditions without leaking because they are used to move fluids under high pressure that are erosive, corrosive, hot and flammable. Thus, API 610 pumps are heavier and more rugged than most other types of pumps.

Power plant pumps are specialized, highly engineered pumps that perform critical functions in the steam cycle of a power plant. The steam cycle consists of a boiler or steam generator that feeds steam to a steam turbine that drives an electricity-producing generator. The three basic categories of power plant pumps are: (1) ''circulating water pumps,'' which deliver cooling water to condensers that condense the spent steam that has passed through a steam turbine; (2) ''condensate pumps,'' which extract the condensed steam; and (3) ''boiler feed pumps,'' which move the condensed steam (now very hot water) back into the boiler or steam generator to make new steam.

2. Product and Geographic Markets. Competition in the sale of API 610 and power plant pumps takes the form of bids that are submitted in response to extensive specifications that take specialized engineers many months to formulate, respond to, and evaluate. The specifications for each bid differ from other bids in terms of technical product attributes and commercial terms. The result of the bidding process generally is a customized pump that can satisfy the most demanding of applications, accompanied by a package of technical engineering services and commercial terms. Because the technical and commercial needs of the customer differ markedly for each API 610 pump or power plant pump bid, a small but significant increase in the price of a pump that meets the bid specifications would not cause a significant number of customers in the United States to substitute other pumps that do not meet those bid specifications. Therefore, each bid for API 610 pumps and power plant pumps for installation in oil refineries and power generation plants in the United States is a relevant product market.

Those competitors that could constrain Flowserve and IDP from

raising prices on bids for API 610 pumps and power plant pumps for installation in oil refineries and power generation plants in the United States are API 610 and power plant pump manufacturers with a substantial physical presence in the United States. Customers installing these pumps in the United States prefer domestic pump suppliers because reputation is important, as is the ability to provide quick and reliable servicing with parts availability and to avoid shipping costs and delays. In addition, with minor exceptions, only domestic manufacturers have an installed base of pumps in the United States, thus allowing customers to more readily observe and evaluate the operation and reliability of the pump in comparable applications. Moreover, pumps manufactured abroad may cost more than comparable pumps manufactured in the United States. The relevant geographic market for analyzing the proposed acquisition is the United States.

3. Anticompetitive Consequences of the Acquisition. Based on capabilities and bidding history, there are only four credible competitors, including Flowserve and IDP, that might bid on a large majority of bids for API 610 pumps for oil refinery projects in the United States, and there are only three or four credible competitors, including Flowserve and IDP, that might bid on a large majority of bids for power plant pumps for electrical generating facilities located in the United States. Although each bidder may be familiar with its competitors, it does not know with any degree of certainty the commercial or technical terms of its competitors' bids prior to submitting its own bid. That uncertainty restrains each bidder's pricing, so it will have a reasonable probability of winning the bid. By eliminating IDP, one of Flowserve's few significant competitors, Flowserve would be able to increase its bid without increasing the probability that it would lose the bid. Similarly, the few remaining bidders could also increase their bids without increasing their risk of losing. Thus, the acquisition of IDP by Flowserve would create an incentive for each bidder to bid a higher amount than it would have were IDP still a competitor.[1]

The Complaint alleges that substantial entry by other pump manufacturers into the sale of API 610 and power plant pumps for installation in the United States is time-consuming, expensive and difficult, and hence, unlikely to counteract these anticompetitive effects.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in the sale of API 610 and power plant pumps for installation in the United States. Within 150 days after the date the Complaint was filed, or five days after entry of the proposed Final Judgment, whichever is later, defendants must divest to an economically viable and effective acquirer(s) perpetual, royalty-free, assignable, transferable licenses to manufacture and sell Flowserve's SCE, VLT, VMT, HQ, HX and WX pump lines; and IDP's J and CGT pump lines; Flowserve's pump plant in Tulsa, Oklahoma; and the IDP service centers in Batavia, Illinois and La Mirada, California. Defendants must use their best efforts to accomplish the divestitures as expeditiously as possible. The proposed Final Judgment requires that these assets must be divested in such a way as to satisfy the United States, in its sole discretion, that the assets can and will be used by the acquirer(s) to compete effectively in the business of manufacturing and selling the divested pump lines to customers, including those in the petroleum and power generation industries in the United States,

Until the ordered divestitures take place, defendants must take all reasonable steps necessary to accomplish the divestitures and cooperate with any prospective acquirer(s). If defendants do not accomplish the ordered divestitures within the prescribed time period, the proposed Final Judgment provides that the Court will appoint a trustee to complete the divestitures. If a trustee is appointed, the proposed Final Judgment provides that defendants must pay all costs and expenses of the trustee. The trustee's commission will be structured to provide an incentive for the trustee based on the price obtained and the speed with which divestitures are accomplished. After his or her appointment becomes effective, the trustee shall serve under such other conditions as the Court may prescribe. The trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the required divestitures. At the end of 150 days, if the divestitures have not been accomplished, the trustee and the parties will make recommendations to the Court, which shall enter such orders as appropriate to accomplish the divestitures.

The relief in the proposed Final Judgment has been tailored to ensure that the ordered divestitures maintain competition that would have been eliminated as a result of the acquisition and to prevent the exercise of market power after the acquisition in the markets alleged in the Complaint.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in 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 Available for Modification of the Proposed Final Judgment

The parties 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 of the decree 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 sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register.**

[1] Each bidder, in deciding how high to bid while facing the uncertainty as to what its rivals will bid, balances the benefit of receiving a higher price when it wins against the cost of a decreased probability of winning when its bid price is raised. When a bidder is eliminated, a given increase in a bid price by a remaining bidder leads to a smaller decrease in the probability of losing. This shift in the balance between the benefit and the cost of raising the bid price makes a price increase by each remaining bidder profitable.

Written comments should be submitted to: Gail Kursh, Chief, Health Care Task Force, Antitrust Division, United States Department of Justice, 325 7th Street, NW, Suite 400, Washington, D.C. 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, a full trial on the merits against defendants Flowserve, I–R and IDP. The United States could have continued such litigation to seek preliminary and permanent injunctions against Flowserve's acquisition of IDP. The United States is satisfied, however, that defendants' divestiture of the assets described in the proposed Final Judgment will establish, preserve and ensure a viable competitor in the relevant markets identified by the United States. To this end, the United States is convinced that the proposed relief, once implemented by the Court, will prevent Flowserve's acquisition of IDP from having adverse competitive effects.

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

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the court *may* consider—

> (1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

Courts have recognized that the term '' 'public interest' take[s] meaning from the purposes of the regulatory legislation.'' *NAACP* v. *Federal Power Comm'n,* 425 U.S. 662, 669 (1976). Since the purpose of the antitrust laws is to preserve ''free and unfettered competition as the rule of trade,'' *Northern Pacific Railway Co.* v. *United States,* 356 U.S. 1, 4 (1958), the focus of the ''public interest'' inquiry under the APPA is whether the proposed Final Judgment would serve the public interest in free and unfettered competition. *United States* v. *American Cyanamid Co.,* 719 F.2d 558, 565 (2d Cir. 1983), *cert denied,* 465 U.S. 1101 (1984); *United States* v. *Waste Management, Inc.,* 1985–2 Trade Cas. ¶ 66,651, at 63,046 (D.D.C. 1985).

In conducting this inquiry, ''the 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.'' [2] Rather,

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

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

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988), quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir.), *cert denied,* 454 U.S. 1083 (1981); *see also Microsoft,* 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that

> the 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.[3]

A proposed consent decree is an agreement between the parties which is reached after exhaustive negotiations and discussions. Parties do not hastily and thoughtlessly stipulate to a decree because, in doing so, they

> waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and the elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.

United States v. *Armour & Co.,* 402 U.S. 673, 681 (1971).

The proposed decree, 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 proposed 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' (citations omitted).[4]

Moreover, the court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the

[2] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.,* 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, *Reprinted in* (1974) U.S.C.C.A.N. 6535, 6538.

[3] *United States* v. *Bechtel Corp.,* 648 F. 2d at 666 (citations omitted) (emphasis added); *see United States* v. *BNS, Inc.,* 858 F. 2d at 463; *United States* v. *National Broadcasting Co.,* 449 F. Supp. 1127, 1143 (C. D. Cal. 1978); *United States* v. *Gillette Co.,* 406 F. Supp. at 716. *See also United States* v. *American Cyanamid Co.,* 719 F. 2d 558, 565 (2d Cir. 1983), *cert. denied,* 465 U.S. 1101 (1984).

[4] *United States* v. *American Tel. and Tel. Co.,* 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983) quoting *United States* v. *Gillette Co., supra,* 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985).

decree against that case.'' *Microsoft,* 56 F.3d at 1459. Since ''[t]he 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 might have but did not pursue. *Id.*

VIII. Determinative documents

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

Dated: July 31, 2000.

Respectfully submitted,

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Certificate of Service

I hereby certify that on this day of July 31, 2000, I caused a copy of the Competitive Impact Statement to be served by U.S. First Class Mail or overnight delivery upon:

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cable Television Laboratories, Inc.

Notice is hereby given that, on March 10, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cable Television Laboratories, Inc. (''CableLabs'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Moffat Communications, Inc., Winnipeg, Manitoba, Canada; Charter Communications, St. Louis, MO; and Access Communications Inc., Dartmouth, Nova Scotia, Canada have been added as parties to this venture.

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

On August 8, 1988, CableLabs filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 7, 1988 (53 FR 34593).

The last notification was filed with the Department on August 28, 1998. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 3, 2000 (65 FR 17535).

Constance K. Robinson,
Director of Operations, Antitrust Division.

[FR Doc. 00–23423 Filed 9–12–00; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Digital Imaging Group, Inc.

Notice is hereby given that, on August 2, 2000, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Digital Imaging Group, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Altamira Group, Burbank, CA; PhotoDex, Inc., Austin, TX; ScanSoft, Inc., Peabody, MA; Vyou.com Inc., San Jose, CA; The Workbook, Inc., Los Angeles, CA; NewHeights Software, Inc., Victoria, British Columbia, Canada; and BizDesign, Inc., Dallas, TX have been added as parties to this venture. Also, BrandEra.com, Toronto, Ontario, Canada; Digital Zone International A/S, Aarhus C, Denmark; FotoWire Development SA, Geneve, Switzerland; G&A Imaging, Hull, Quebec, Canada; Fonecam, San Diego, CA; NTT Communications, Tokyo, Japan; and Kablink Corporation, San Diego, CA have been dropped as parties to this venture.

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

On September 25, 1997, Digital Imaging Group, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 10, 1997 (62 FR 60530).

The last notification was filed with the Department on May 4, 2000. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 1, 2000 (65 FR 46950).

Constance K. Robinson,
Director of Operations, Antitrust Division.

[FR Doc. 00–23422 Filed 9–12–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Gas Utilization Research Forum (''GURF'')

Notice is hereby given that, on May 18, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Gas Utilization Research Forum (''GURF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Institut Francais Du Petrole (IFP), Cedex, France, has become a new member to GURF and Columbia Gas of Ohio, Columbus, OH is no longer participating in GURF.

No other changes have been made in either the membership or planned