Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to Environment and Natural Resources Division, Environmental Enforcement Section, fax no. (202) 514–0097, phone confirmation number (202) 514–5271, email *EESCDCopy.ENRD@usdoj.gov.* If requesting a copy from the Consent Decree Library, please enclose a check in the amount of $138.50 for a copy of the complete Consent Decree (25 cents per page reproduction cost) or $14.50 for a copy exclusive of exhibits and defendants' signatures, payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

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

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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. *SG Interests I, Ltd., et al.;* Public Comments and Response on the Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the United States' Response to Public Comments on the proposed Final Judgment in *United States* v. *SG Interests I, Ltd. et. al.,* Civil Action No. 12–cv–000395–RPM–MEH, which was filed in the United States District Court for the District of Colorado on August 3, 2012, together with copies of the 76 comments received by the United States.

Pursuant to the Court's June 5, 2012 order, comments were published electronically and are available to be viewed and downloaded at the Antitrust Division's Web site, at: *http://www.justice.gov/atr/cases/sggunnison.html.* A copy of the United States' Response to Comments is also available at the same location.

Copies of the comments and the response are available for inspection at the Department of Justice, Antitrust Division, 450 Fifth Street NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), and at the Office of the Clerk of the United States District Court for the District of Colorado, Alfred A. Arraj United States Courthouse, 901 19th Street, Room A105, Denver, CO 30294–3589. Copies of any of these materials may also be obtained upon request and payment of a copying fee.

Patricia A. Brink,

Director of Civil Enforcement.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Senior Judge Richard P. Matsch

Civil Action No. 12–cv–00395–RPM–MEH

UNITED STATES OF AMERICA Plaintiff, v. SG INTERESTS I, LTD., SG INTERESTS VII, LTD., and GUNNISON ENERGY CORPORATION, Defendants.

RESPONSE OF PLAINTIFF UNITED STATES TO PUBLIC COMMENTS ON THE PROPOSED FINAL JUDGMENT

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) (''Tunney Act''), the United States files the public comments concerning the proposed Final Judgment in this case and its response to those comments. After careful consideration, the United States continues to believe that the relief sought in the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint. The United States will move the Court for entry of the proposed Final Judgment after it has posted all public comments and this response on the Antitrust Division Web site and published in the **Federal Register** this response and the Web site address at which the public comments may be viewed and downloaded, as set forth in the Court's order of June 5, 2012.

On February 15, 2012, the United States filed a civil antitrust complaint against Defendant Gunnison Energy Corporation (''GEC'') and Defendants SG Interests I, Ltd. and SG Interests VII, Ltd. (''SGI'') seeking damages and other relief to remedy the effects of an anticompetitive agreement between SGI and GEC that eliminated competitive bidding between the companies for four leases of federal land in the Ragged Mountain Area (''RMA'') of Western Colorado. As alleged in the Complaint, this agreement significantly reduced competition for these leases, and as a result, the United States received substantially less revenue from the sale of the leases than it would have had SGI and GEC competed against each other at the auctions.

Simultaneously with the filing of the Complaint, the United States filed a proposed Final Judgment and a Stipulation signed by the United States and Defendants consenting to the entry of the proposed Final Judgment after compliance with the requirements of the Tunney Act. Pursuant to those requirements, the United States filed a Competitive Impact Statement (''CIS'') in this Court on February 15, 2012; published the proposed Final Judgment and CIS in the **Federal Register** on February 23, 2012, see *United States v. SG Interests I LTD., et al.,* Proposed Final Judgment and Competitive Impact Statement, 77 Fed. Reg. 10775 (Feb. 23, 2012); and caused to be published summaries of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, in *The Washington Times* for seven days (March 1 and March 2, and March 5 through March 9, 2012) and in *The Denver Post* for seven days (March 1 through March 7, 2012). The 60-day period for public comments ended on May 7, 2012. The United States received seventy-six comments, as described below, which are attached hereto.

I. THE INVESTIGATION AND PROPOSED FINAL JUDGMENT

A. The Investigation

The proposed Final Judgment is the culmination of an investigation into two agreements executed by SGI and GEC pursuant to which they jointly bid for and acquired twenty-two leases of federal lands in the RMA. As part of its investigation, the United States issued Civil Investigative Demands to both firms; reviewed the documents and other materials produced in response to these Demands; and interviewed market participants.

After carefully analyzing the investigatory materials and evaluating the competitive effects of these two agreements in light of all relevant circumstances, the United States concluded that Defendants' Memorandum of Understanding (''MOU''), executed in February 2005 and amended in May 2005, was an unlawful restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. Accordingly, the United States filed the Complaint in this action challenging Defendants' joint acquisition of four leases pursuant to this agreement.

In contrast, the United States concluded that Defendants' subsequent noncompete agreement was ancillary to a broader joint development and production collaboration established by Defendants in the summer of 2005. On this basis, the United States determined not to challenge Defendants' joint

acquisition of eighteen leases in the latter half of 2005 and 2006.

B. The Facts Surrounding the Violation

As discussed more fully in the CIS at 3–6, the federal government owns hundreds of millions of acres of land in the United States, and the Bureau of Land Management (''BLM'') manages the rights to subsurface oil and natural gas on these federal lands. Private parties, such as oil and gas companies, typically acquire oil and gas leases on federal lands at regional auctions conducted by the BLM.

Defendants GEC and SGI are oil and gas companies engaged in the exploration and development of natural gas resources on federal lands in the RMA. Prior to 2003, their activities generally focused on different parts of the RMA, with SGI acquiring leases on the eastern side of the area while GEC acquired leases along the southern boundary. However, over the course of 2003 and 2004, their interests began to overlap.

Recognizing that they would be the primary competitors to acquire three natural gas leases that were to be auctioned by the BLM in February 2005, GEC and SGI executed, on the eve of the auction, the MOU pursuant to which they agreed not to compete for the leases. Instead, SGI bid for and won the three leases at the February BLM auction for $72, $30 and $22 per acre—prices substantially lower than likely would have prevailed had SGI and GEC bid against each other. GEC attended the auction, but, honoring the terms of the MOU, did not bid; and SGI later assigned to GEC at cost a 50 percent interest in the three leases.

In early May 2005, Defendants amended the MOU to include an additional lease that was adjacent to one of the parcels from the February auction and set to be auctioned by the BLM on May 12, 2005. At the auction, SGI bid for and obtained the fourth lease pursuant to the terms of the MOU. Again, GEC attended the auction but did not bid, and again, SGI won the lease—this time with a bid of only $2 per acre.

In June 2005, Defendants, who had been discussing the possibility of a joint venture since October 2004, executed an agreement to engage in a broad collaboration to jointly acquire and develop leases and pipelines in the RMA. Defendants' broad agreement encompassed jointly acquiring the leases and other assets of a third company, BDS International, LLC, including the only existing pipeline out of the RMA. The broad agreement also encompassed joint development and ownership of a new, larger pipeline to handle the large volumes of natural gas anticipated from the RMA. As part of this collaboration, Defendants agreed to share ownership of any oil and gas leases within the RMA acquired by either party in the future. This agreement eliminated the incentive for the Defendants to bid against each other at future auctions for such leases.

Pursuant to the broad agreement, Defendants have jointly acquired eighteen additional leases in the area of the RMA served by the new pipeline. They have also jointly invested approximately $80 million over the past five years to develop wells, improve existing pipelines, and build a new pipeline.

C. The Proposed Final Judgment

The MOU significantly reduced competition for the four leases at the February and May 2005 auctions, and resulted in the BLM receiving lower payments than it would have received had GEC and SGI competed for the leases. The proposed Final Judgment is designed, *inter alia,* to compensate the United States for the loss in revenue sustained as a result of Defendants' unlawful agreement. Specifically, it requires GEC and SGI to each pay $275,000, for a total of $550,000, to the United States.

As described in the CIS at 6–7, the proposed Final Judgment relates to a *qui tam* action arising from common facts, and settlements with the United States Attorney's Office for the District of Colorado. The payments to the United States specified in the proposed Final Judgment will satisfy claims that the United States has against GEC and SGI under Section 1 of the Sherman Act, as alleged in this action, and the False Claims Act, as set forth in the separate agreements reached between GEC and SGI and the United States Attorney's Office for the District of Colorado (which are Attachments 1 and 2 to the proposed Final Judgment).

II. STANDARDS GOVERNING THE COURT'S PUBLIC INTEREST DETERMINATION UNDER THE TUNNEY ACT

The Tunney Act requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In making that determination, The Tunney Act calls for the Court to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A)–(B). These statutory factors call for consideration of, 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).

The public interest inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'''); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act). Under the Tunney Act, the ''Court's function is not to determine whether the proposed [d]ecree results in the balance of rights and liabilities that is the one that will best serve society, but only to ensure that the resulting settlement is within the *reaches* of the public interest.'' *United States* v. *KeySpan,* 763 F. Supp. 2d 633, 637 (S.D.N.Y. 2011) (internal citations and quotations omitted; emphasis in original); *see also United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (court should not ''engage in an unrestricted evaluation of what relief would best serve the public'').

With respect to the scope of the complaint, the Tunney Act review does not provide for an examination of possible competitive harms the United States did not allege ''unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC*

Commc'ns, 489 F. Supp. 2d at 14–15 (citing *Microsoft,* 56 F.3d at 1462).

With respect to the sufficiency of the proposed remedy, the United States is entitled to deference as to its views of the nature of the case, its perception of the market structure, and its predictions as to the effect of proposed remedies. *See, e.g., KeySpan,* 763 F. Supp. 2d at 642; *SBC Commc'ns,* 489 F. Supp. 2d at 17.[1] A court should not reject the United States's proposed remedies merely because other remedies may be preferable. *KeySpan,* 763 F. Supp. 2d at 637–38; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies'').

The procedure for the public-interest determination is left to the discretion of the court. *SBC Commc'ns,* 489 F. Supp. 2d at 11; *see United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''). In its 2004 amendments to the Tunney Act,[2] Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, stating ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2).

III. SUMMARY OF THE PUBLIC COMMENTS

The United States received seventy-six public comments. The comments are being filed in the Court's docket and will be posted on the Web site of the Antitrust Division pursuant to this Court's June 5, 2012 Order.[3] The comments are summarized below:

- Seventy-two comments were filed by individuals. Almost all of these individuals express concern about the alleged disparity between the terms of the proposed Final Judgment in this case compared with criminal sanctions imposed on Tim DeChristopher, an individual who was prosecuted for false statements in connection with, and disruption of, an unrelated federal oil and gas lease auction. A large number of the individual comments also assert that the remedy in this case is inadequate to cure the alleged violation. Some of the comments raise other issues relating to the general conduct of Defendants' oil and gas operations in Colorado.
- A coalition of environment and public health groups from across western Colorado[4] wrote comments (''Coalition Cmts'') expressing concern that the proposed settlement (1) allows Defendants to retain the four leases at issue and does not debar them from future auctions; (2) does not address the other eighteen leases that Defendants acquired; (3) does not deter anticompetitive conduct; and (4) ''markedly departs'' from the sanctions imposed on DeChristopher. Coalition Cmts at 2.
- The Board of County Commissioners for Pitkin County (''P.C. Cmts''), an area which encompasses portions of the RMA and is impacted by development of oil and gas leaseholds, filed comments in which it commends the Department of Justice for enforcing the antitrust laws in the federal oil and gas leasing context. P.C. Cmts at 10. The comments, however, assert that the settlement is ''lenient'' and will not deter future antitrust violations in that it does not take into account the egregiousness of the conduct, does not impose liability for the other eighteen leases subject to joint bidding, does not impose treble damages, and ignores other violations of the U.S. Code. The comments also assert that Defendants have not complied with the disclosure provisions of the Tunney Act. P.C. Cmts at 21–22.
- Scott Thurner, who has had business dealings with—and litigation against—Defendants, expressed concern that the proposed settlement ''does not address the majority of the predatory and monopolistic activities'' that Defendants have allegedly committed and is inadequate to deter Defendants from further engaging in anticompetitive conduct. Thurner Cmts at 1–4.
- Gunnison Energy Corporation, a defendant in this case, filed a comment in which it supports the settlement while stressing that it has not been found to have violated any laws. It asserts that it did not cause the government to lose revenue on any of the four leases at issue, that joint ventures and joint bidding are common industry practices and recognized by the BLM and the antitrust laws; that it settled ''not because it engaged in any illegal or improper conduct, but because the cost of defending itself would far exceed the cost of settling;'' and that the monetary payment it is required to make under the proposed Final Judgment is to settle the *qui tam* lawsuit. GEC Cmts at 1–2.

IV. THE DEPARTMENT'S RESPONSE TO SPECIFIC COMMENTS

In the remainder of this Response, the United States addresses the categories of issues raised by the public comments. Although the United States has reviewed every comment individually, it is not responding to comments on an individual comment-by-comment basis as many comments raise similar issues. Unless otherwise noted, citations to specific comments merely are *representative* of comments on that issue, and should not be interpreted as an indication that other comments were not reviewed.

A. Comparison to the Federal Prosecution of Tim DeChristopher

The primary issue raised by almost all of the individual comments concerns the federal prosecution of Tim DeChristopher, an individual who was found guilty of criminal conduct involving an unrelated BLM gas lease auction. Commentors allege inequities between the civil charges and remedy in the present case compared with the criminal charges—and resulting incarceration of—DeChristopher.

DeChristopher was indicted in 2009 on two federal charges arising from his alleged disruption of a December 19, 2008 government oil and gas lease auction that occurred in Salt Lake City, Utah. The indictment alleged that DeChristopher attended the BLM auction, ''represented himself as a *bona fide* bidder, when in fact he was not,'' ''completed a Bidder Registration Form certifying that he had a good faith intention to acquire an oil and gas lease on the offered lands,'' and ''bid on and purchased oil and gas leases that he had neither the intention nor the means to acquire.'' [5] The government offered

[1] Under this standard, the United States need not show that a settlement will perfectly remedy the alleged antitrust harm; rather, it need only provide a factual basis for concluding that the settlement is a reasonably adequate remedy for the alleged harm. *SBC Commc'ns,* 489 F. Supp. 2d at 17.

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

[3] The comments do not contain the types of private information listed in Fed. R. Civ. P. 5.2(a); accordingly, the United States will not redact any material from the set of comments to be filed in the Court's docket. The United States, however, will redact in the set of comments to be published on the Antitrust Division's public Web site portions of individual commenter's personal email addresses.

[4] The coalition includes Citizens for a Healthy Community, High Country Citizens' Alliance, NFRIA–WSERC Conservation Center, Western Colorado Congress, and the Wilderness Workshop.

[5] Indictment ¶¶ 4–6, *United States* v. *DeChristopher,* 2:09–cr–00183–DB (filed April 1,

evidence at trial that DeChristopher intentionally disrupted the auction to further environmental activism goals and that his acts resulted in harm, including the cancellation of the auction.[6] DeChristopher claimed that he was acting to hold the oil industry accountable for alleged environmental concerns and that he was engaged in civil disobedience. After a full trial, the jury found DeChristopher guilty on both counts. The court sentenced DeChristopher to 24 months' imprisonment and a fine.[7] The case is currently on appeal in the United States Court of Appeals for the Tenth Circuit.

Commenters in this proceeding are concerned that both this case and the DeChristopher case involve conduct that affected BLM auctions of oil and gas leases, yet DeChristopher was incarcerated following a criminal conviction while Defendants in this case are paying money damages to settle a civil charge. For example, one commenter stated, ''It seems wrong to sentence one man to prison for what was basically an act of civil disobedience and then to slap the wrists of two major corporations for plotting with the help of attorneys to underbid on gas lease auctions.'' E. Marston Cmts at 2. Such views are representative of almost all of the other commenters on this issue.[8]

The United States appreciates the concerns raised by the commenters but respectfully submits that a comparison to the DeChristopher case is inapt. The proposed Final Judgment currently before the Court would resolve—before trial—a civil antitrust claim for which the government is obtaining monetary relief for damages it suffered. *Cf.* 15 U.S.C. § 15a (damages available to United States when it is ''injured in its business or property'' as a result of an antitrust violation). The DeChristopher case, on the other hand, was a criminal action in which the jury convicted the defendant of false statements and other conduct following an indictment and full trial. These substantial differences necessarily lead to the different outcomes of the two cases.

Moreover, an examination of alleged inequities between this case and the DeChristopher case is beyond the scope of the Tunney Act. As discussed above, the appropriate public interest inquiry in this case involves an evaluation of the relationship between the remedy secured and the specific allegations set forth in the Complaint; *i.e.,* a civil violation of the antitrust laws that caused harm to the United States. *See* 15 U.S.C. § 16(e)(1) (factors for court to consider in Tunney Act proceeding relate to the remedy at issue and its relationship to the allegations in the complaint; none of the factors involve comparisons to other matters); *Microsoft,* 56 F.3d at 1459 (purpose of Tunney Act proceeding is to evaluate the adequacy of the remedy only for the antitrust violations alleged in the complaint).

To the extent commenters are requesting that Defendants in this case be charged with a criminal violation of the antitrust laws, such an inquiry is likewise beyond Tunney Act review. As a general matter, the Tunney Act does not provide an opportunity to challenge the prosecutorial decisions of the United States regarding the nature of the claims brought in the first instance. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60.[9] In this case, the United States, based on a full and complete investigation of all the facts and circumstances, decided to proceed civilly, not criminally,[10] and that determination should not be second-guessed in this proceeding.

B. The Decision Not to Challenge Under the Antitrust Laws Defendants' Joint Acquisition of the Other Eighteen Leases

The Complaint alleges that Defendants' joint acquisition of four leases pursuant to their MOU was a violation of the antitrust laws. As discussed above, Defendants also agreed not to compete against each other with respect to eighteen additional leases they acquired pursuant to a broad development collaboration formed subsequent to the MOU. Numerous comments questioned why the United States did not challenge under the antitrust laws Defendants' acquisition of these other eighteen leases. *E.g.,* Coalition Cmts at 2–3.

As discussed above, the United States's decision as to the claims it made was based on a full and complete investigation of all the facts and circumstances at issue. The Tunney Act review is limited to the relationship of the remedy to the violations that the United States has alleged in its Complaint, and does not authorize the court to reach beyond the Complaint to evaluate claims that the government did not make and to inquire as to why they were not made. *See supra* § V.A.

Although our decision not to challenge the eighteen additional leases has no bearing on whether entry of the proposed Final Judgment would be in the public interest, the following provides information as to why the United States did not challenge the eighteen additional leases.

1. Relevant Legal Framework

Section 1 of the Sherman Act prohibits ''[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States.'' 15 U.S.C. § 1. The Sherman Act ''rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest

2009). The two count indictment charged DeChristopher with violating the Federal Onshore Oil and Gas Leasing Reform Act, 30 U.S.C. § 195(a)(1), and making false statements in violation of 18 U.S.C. § 1001.

[6] The brief filed by the United States in the appeal of DeChristopher's conviction sets forth additional details relating to his alleged conduct and the trial. *See* Brief for Appellee United States of America (filed Jan. 26, 2012), *United States* v. *DeChristopher,* 10th Cir., Case No. 11–4151 (''U.S. App. Brief''), at 3–20.

[7] *See generally* U.S. App. Brief at 3–8 & 17–20. The government argued that DeChristopher deserved a significant period of incarceration for, *inter alia,* failure to accept responsibility, encouraging others to violate the law, and the damage caused by his acts. *See id.*

[8] *See, e.g.,* Coalition Cmts at 2 & 4 (''The [settlement] markedly departs from sanctions sought in a recent highly publicized trial involving an alleged bidder engaged in an act of civil disobedience at a federal oil and gas lease sale, resulting in disruption to a lease sale but arguably no harm to BLM or taxpayers * * * . [T]he proposed settlement is demonstrably out of line with charges DOJ has pursued against other parties who have disrupted lease sales—rendering this settlement patently prejudicial on its face.'').

[9] See also SBC Commc'ns, 489 F. Supp. 2d at 14 (''a district court is not permitted to reach beyond the complaint to evaluate claims that the government did not make and to inquire as to why they were not made'') (internal quotations omitted; emphasis in original); accord BNS, 858 F.2d at 462–63 (''[T]he [Tunney Act] does not authorize a district court to base its public interest determination on antitrust concerns in markets other than those alleged in the government's complaint.'').

[10] There are some situations in which the decision to proceed criminally or civilly under the antitrust laws can require ''considerable deliberation.'' U.S. Dep't of Justice, Antitrust Division Manual, at III–20 (4th ed. 2008, rev. 2009),*available at http://www.justice.gov/atr/public/divisionmanual/index.html.* Here, the United States chose to pursue the conduct as a civil violation. This is the first time that the United States has challenged a joint bidding arrangement for BLM mineral rights leases and, as noted in the Competitive Impact Statement, the joint bidding arrangement at issue was performed under the written MOU drafted by attorneys.

material progress * * * .'' *National Collegiate Athletic Ass'n v. Board of Regents of Univ. of Okla.,* 468 U.S. 85, 104 n. 27 (1984) (quoting *Northern Pac. R. Co. v. United States,* 356 U.S. 1, 4–5 (1958)).

The law has long recognized that ''certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use.'' *Northern Pac. R. Co., 356 U.S. at 5; accord, Catalano, Inc. v. Target Sales, Inc.,* 446 U.S. 643, 646 n.9 (1980). Bid rigging agreements are among the types of restraints courts have condemned as *per se* unlawful.

Nevertheless, even an agreement that would ordinarily be condemned as unlawful *per se* may escape such condemnation if it is ancillary to a legitimate procompetitive collaboration. Under established antitrust law, a restraint is deemed ancillary to a legitimate collaboration if it is ''reasonably necessary'' to achieve the procompetitive benefits of the collaboration.[11] Ancillary restraints are evaluated as part of the collaboration under a rule of reason analysis. *Salvino,* 542 F.3d at 339 (Sotomayor, J., concurring). In contrast, a restraint that is not reasonably necessary—or is broader than necessary—to achieve the efficiencies from a collaboration will be evaluated on a stand-alone basis and may be *per se* illegal even if the remainder of the collaboration is entirely lawful. *Id.*

Applying this analysis to an auction setting, a naked agreement between competitors not to bid against each other is properly treated as *per se* unlawful. On the other hand, a joint bidding agreement that is ancillary to a procompetitive or efficiency-enhancing collaboration may be lawful under the rule of reason. Significantly, lawful joint bidding ''contemplates subsequent joint productive activity, which entails a measure of risk sharing or joint provision of some good or service.'' 12 Phillip E. Areeda & Herbert Hovenkamp, *Antitrust Law* ¶ 2005d, at 75 (2d ed. 2005). For example, if a firm, which cannot or might not otherwise compete on a particular bid, joins with another firm to pool resources or share risk, their joint bidding might increase competition by increasing the number of bidders.

2. Analysis

After carefully analyzing the investigatory materials and evaluating the competitive effects of these two agreements in light of all relevant circumstances, the United States concluded that Defendants' MOU was a *per se* unlawful restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. As stated in the CIS, the MOU was not ancillary to a procompetitive or efficiency-enhancing collaboration between the Defendants. *See* CIS at 5; *see also* Complaint ¶ 20.

Defendants had been discussing the possibility of a broad joint venture since October 2004; however, by early February 2005 those discussions had broken down. With the auction imminent, Defendants executed the MOU, which eliminated competitive bidding between the companies for the leases.[12] Although Defendants continued to entertain the possibility of establishing a broader, efficiency-enhancing collaboration, significantly, at the time they executed the MOU and obtained the leases, any such collaboration remained just that—a vague possibility.[13] The fact that Defendants ultimately established such a collaboration does not transform their prior agreement not to compete into a lawful ancillary restraint.[14]

In contrast, the United States concluded that Defendants' joint acquisition of eighteen leases starting in August 2005 and continuing through November 2006 was reasonably related to, and reasonably necessary to achieve, the potential benefits of their broad collaboration. That collaboration, formed in June 2005 after significant negotiations between the parties, was reflected in an agreement that provided for joint exploration and development of lands located within the defined area. It was specifically designed to facilitate the efficient production of gas and included provisions for the joint acquisition and ownership of leases in the area, for conducting joint operations, and for building and operating a pipeline system to transport gas to end-users which required substantial capital investment. Defendants' agreement to share ownership of future leases acquired by either party aligned their incentives to cooperate in achieving the goals of the collaboration and discouraged any one Defendant from appropriating an undue share of the collaboration's benefits. Defendants' collaboration, thus, allowed them to pool their resources and share the risks of exploration for, and development of, the natural resources, which provided an opportunity to realize significant production efficiencies. Accordingly, based on a review of the facts and circumstances, the United States decided not to challenge Defendants' joint acquisition of the eighteen leases that occurred pursuant to, and in furtherance of, the broad collaboration.[15]

C. Sufficiency of the Proposed Final Judgment

Commenters raise three related concerns as to the sufficiency of the proposed Final Judgment: (1) Whether the dollar amount of the settlement is too low to remedy the harm or deter anticompetitive conduct; (2) whether Defendants should have to admit

[11] *See generally* Department of Justice, Antitrust Division, and Federal Trade Commission, *Antitrust Guidelines for Collaborations Among Competitors* § 1.2 (2000) (''*Collaboration Guidelines*''). *See also Major League Baseball v. Salvino,* 542 F.3d 290, 338 (2d Cir. 2008) (Sotomayor, J., concurring) (''a per se or quick look approach may apply * * * where a particular restraint is not reasonably necessary to achieve any of the efficiency-enhancing benefits of a joint venture and serves only as a naked restraint against competition''); *Rothery Storage & Van Co. v. Atlas Van Lines, Inc.,* 792 F.2d 210, 224 (D.C. Cir. 1986) (Bork, J.) (''To be ancillary, and hence exempt from the per se rule, an agreement eliminating competition must be subordinate and collateral to a separate, legitimate transaction. The ancillary restraint is subordinate and collateral in the sense that it serves to make the main transaction more effective in accomplishing its purpose.''); *Los Angeles Mem'l Coliseum Comm'n v. NFL,* 726 F.2d 1381, 1395 (9th Cir. 1984) (discussing ancillary restraints doctrine); *In re Polygram Holdings, Inc.,* 2003 WL 21770765 (F.T.C. 2003) (parties must prove that the restraint was ''reasonably necessary'' to permit them to achieve particular alleged efficiency), *aff'd, Polygram Holdings, Inc. v. F.T.C.,* 416 F.3d 29 (D.C. Cir. 2005).

[12] GEC asserts in its comments that it ''believes it can establish that as to some or all of those 4 leases there would not have been competitive bidding even if GEC and SG had not bid jointly.'' GEC Cmts at 1. Contemporaneous GEC business documents demonstrate, however, that after the February 2005 auction, senior GEC executives congratulated each other on having successfully avoided a bidding contest with SGI.

[13] The United States assesses competitive effects arising from an agreement as of the time of possible harm to competition. *See Collaboration Guidelines* at § 2.4.

[14] *See, e.g., Polk Bros., Inc. v. Forest City Enters.,* 776 F.2d 185, 189 n.17 (7th Cir. 1985) (holding that ancillarity is determined by evaluating the likely purpose of the restraint ''at the time it was adopted''); *see also* 11 Phillip E. Areeda & Herbert Hovenkamp, *Antitrust Law* ¶ 1908, at 273 (2d ed. 2005).

[15] Contrary to GEC's representations in its comments, the Department has not investigated ''every aspect of GEC's BLM lease activities from the company's inception to the present, and determined that with the exception of 4 leases acquired jointly with SG Interests in early 2005, GEC's activities were efficiency-enhancing and pro-competitive, and violated no laws.'' GEC Cmts at 1. As set forth in the Stipulation, entry of the proposed Final Judgment settles only those antitrust claims of the United States arising from the specific events giving rise to the allegations described in the Complaint. Stipulation at ¶ 4. It does not settle any antitrust claims of the United States against Defendants arising outside the scope of the Complaint, including from Defendants' acquisition and operation of the Ragged Mountain pipeline. *Id.*

wrongdoing; and (3) whether Defendants should be required to disgorge the leases and be debarred from future auctions. Each is addressed in turn below.

a. Dollar Amount

Commenters characterize the monetary payment as an inadequate ''fine'' that amounts to a ''slap on the wrist'' for the defendants. *E.g.,* Outes Cmts at 1. For example, Pitkin County calls the proposed judgment ''lenient'' and insufficient to deter future violations. P.C. Cmts at 10. Thurner also argues it is ''inadequate to keep GEC and SGI from further participating in [illegal] antitrust activities.'' Thurner Cmts at 3.

The proposed remedy, however, constitutes significant and meaningful relief. As a result of the unlawful agreement, the BLM received lower payments for the leases. The payment of damages to the United States reflects additional auction revenues that the BLM likely would have received had SGI and GEC acted as independent competitors at the February and May 2005 auctions. This is the first time that the United States has challenged under the antitrust laws a joint bidding arrangement for BLM mineral rights leases. The fact of the challenge and the relief obtained will serve to deter the parties and other industry participants from engaging in such conduct as this case places a marker that any ill-gotten benefit that potential violators may realize from anticompetitive joint bidding agreements will be subject to damages claims.

Pitkin County nevertheless criticizes the settlement amount and argues that it should be increased to approximate treble damages to which those who suffer monetary harm are entitled upon a finding of antitrust liability. P.C. Cmts at 15–17. Commenters' position ignores the fact that there has been no finding of liability in this case; that securing a finding of liability involves litigation risks; and that even if liability is established, there are risks in determining and securing damages.[16] Indeed, Commenters appear to assume, incorrectly, that the precise amount of damages is uncontested here. Calculation of damages in this case would require a determination of the price the United States would have received for the leases had Defendants bid against each other at auction—a multi-variable exercise. Were this case to proceed to trial, both the amount of damages and the calculation methodology would be heavily disputed by the parties. The settlement resolves this dispute by requiring Defendants to make a significant monetary payment, one that is seven times the amount they initially paid.[17]

The United States recognizes that it has not proved its case at trial and that ''a court considering a proposed settlement does not have actual findings that the defendants [] engaged in illegal practices, as would exist after a trial.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15 (citing *Microsoft,* 56 F.3d at 1461). The monetary amount is the product of settlement and accounts for litigation risk and costs. It is appropriate to consider litigation risk and the context of settlement when evaluating whether a proposed remedy is in the public interest as ''room must be made for the government to grant concessions in the negotiation process for settlements.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15; *see also KeySpan,* 763 F. Supp. 2d at 642 (''The adequacy of the [settlement] amount must be evaluated in view of the Government's decision to settle its claims and seek entry of the consent decree. When a litigant chooses to forgo discovery and trial in favor of settlement, full damages cannot be expected.'').

In assessing criticisms about the dollar amount of the settlement,[18] the United States, in Tunney Act review of antitrust settlements, is entitled to deference as to predictions about the efficacy of its remedies. *E.g., SBC Commc'ns,* 489 F. Supp. 2d at 17; *United States v. Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case). Such deference is not unique to antitrust cases; in a recent case involving a government settlement of an alleged securities law violation, the Second Circuit Court of Appeals emphasized, ''The scope of a court's authority to second-guess an agency's discretionary and policy-based decision to settle is at best minimal.'' *SEC v. Citigroup,* 673 F.3d 158, 164 (2d Cir. 2012) (*per curiam* opinion of motions panel). As such, the commenters' concerns about the sufficiency of the dollar amount of the remedy are misplaced.

In addition, commenters mischaracterize the remedy when they refer to the settlement as a ''fine'' or equate the settlement amount to Defendants' overall resources or ability to pay (*i.e.,* a ''slap on the wrist''). As discussed above, this is a civil case in which the United States suffered harm. The Clayton Act provides that the United States is entitled to damages when it is injured in its business or property, *see* 15 U.S.C. § 15a, and the $550,000 payment is compensation for those damages. The Sherman Act does not provide for civil penalties or civil fines.

b. No admission of wrongdoing

Commenters argue that the proposed Final Judgment is insufficient because it does not contain an admission or finding that Defendants violated the law. Lyons Cmts at 1; Morrison Cmts at 1–2 (defendants ''show no contrition''). Commenters' concerns are misplaced. The government routinely enters into antitrust consent decrees in which no findings are made and defendants do not admit liability. Requiring admissions or findings of liability as a prerequisite to entering a consent decree would undercut Congress's purpose and contravene the public interest in allowing the government to obtain relief without the risk and delay of litigation.

Congress has designed the remedial provisions of the antitrust laws to encourage consent judgments, which allow the government to obtain relief without the ''time, expense and inevitable risk of litigation.'' *United States v. Armour and Co.,* 402 U.S. 673, 681 (1971). Section 5 of the Clayton Act provides that litigated final judgments establishing a violation in government antitrust cases shall be ''prima facie evidence'' against the defendant in subsequent private litigation, but the statute specifies that this provision does not apply to ''consent judgments or decrees entered before any testimony has been taken.'' 15 U.S.C. § 16(a). Congress provided this exception to the Clayton Act's prima facie evidence provision ''in order to encourage defendants to settle promptly government-initiated antitrust claims and thereby to save the government the time and expense of further litigation.'' *United States v. National Ass'n of Broadcasters,* 553 F. Supp. 621, 623 (D.D.C. 1982) (collecting cases).

Congress confirmed its continuing recognition of the importance of consent

[16] For example, if this case were to proceed to trial, the parties likely would litigate whether the four-year statute of limitations, 15 U.S.C. § 15b, would act to bar a claim for damages.

[17] In 2005, GEC and SGI paid approximately $94,000 for the four leases they acquired pursuant to the MOU, resulting in an average per acre price of approximately $25. By paying an additional $550,000, GEC and SGI in effect will have paid approximately $175 per acre, seven times the initial bid amount.

[18] *E.g.,* Coalition Cmts at 4 (asserting that settlement amount should have been higher based on comparisons to other potential bidding scenarios).

decrees when it passed the Tunney Act in 1974. The legislative history unambiguously demonstrates Congress's understanding that government antitrust settlements typically occur without an admission or finding of liability.[19] Following enactment of the Tunney Act, courts have expressly recognized the Congressional intent to preserve the policy of encouraging antitrust consent decrees.[20]

The Supreme Court has long endorsed the entry of consent judgments in which there is no finding of liability, and it has done so even when the defendant has affirmatively asserted its innocence.[21] Only once, to our knowledge, has a district court questioned an antitrust consent decree on that basis, and its criticism was specifically rejected on appeal. In *United States v. Microsoft,* the Court of Appeals reversed a district court's refusal to enter a consent decree, holding as ''unjustified'' the district court's criticism of the defendant ''for declining to admit that the practices charged in the complaint actually violated the antitrust laws.'' *United States v. Microsoft,* 56 F.3d at 1448, 1461 (D.C. Cir. 1995). The Court of Appeals emphasized that the ''important question is whether [the defendant] will abide by the terms of the consent decree regardless of whether it is willing to admit wrongdoing.'' *Id.* Similarly, in a recent case arising under the securities laws, the Court of Appeals for the Second Circuit—deciding whether to stay district court proceedings—found that the SEC had a strong likelihood of overturning the district court's decision to block a settlement that did not contain an admission or finding of liability. In so doing, the Court of Appeals explained:

It is commonplace for settlements to include no binding admission of liability. A settlement is by definition a compromise. * * * We doubt whether it lies within a court's proper discretion to reject a settlement on the basis that liability has not been conclusively determined.

SEC v. Citgroup, 673 F.3d 158, 165–66 (2d Cir. 2012). Accordingly, there is no basis here to insist that the public interest requires an admission or a finding of liability.

c. Forfeiture of Leases/Debarment from Future Auctions

Commenters question why the settlement only includes monetary relief and not further sanctions. Pitkin County argues that Defendants should be subject to ''debarment,'' a penalty under the Mineral Leasing Act which provides for ''prohibition from participation in exploration, leasing, or development of any Federal mineral,'' 30 U.S.C. § 195(c). P.C. Cmts at 17–19. Other commenters seek forfeiture of the leases at issue so that Defendants cannot develop the properties. *E.g.* Coalition Cmts at 2–3 (''Issuance and development of these leases is arguably in direct contravention of the public interest. If development proceeds, it should not be undertaken by operators known to disregard the public trust—the values at stake are simply too great.'').

As discussed above, the United States is entitled to deference as to its predictions about the efficacy of its remedies. In this case, Defendants' anticompetitive conduct caused monetary harm to the United States in the form of lost auction revenues. As such, the payment called for in the proposed Final Judgment is an appropriate remedy because it will compensate the United States for that harm; there is no need for the disgorgement of the actual lease interests themselves or debarment from future auctions.

3. The United States Should Investigate Other Issues

Commenters request investigations and action relating to a wide variety of conduct engaged in by the defendants. For example, Thurner—who has been engaged in litigation with Defendants—stated, ''The proposed settlement does not address the majority of the predatory and monopolistic activities in which GEC and SGI have engaged, and they are continuing to engage in [illegal] antitrust activities.'' Thurner Cmts at 1. Other commenters have raised numerous concerns with Defendants' general conduct in the oil and gas industry. For example commenters express concern about a proposed land exchange involving the Bear Ranch (Brill Cmts at 3, E. Marston Cmts at 2); alleged environmental harm caused by Defendants' development of leased land (Coalition Cmts at 3–4, Brett Cmts; McCarthy Cmts); and an employee of one of the Defendants serving on a BLM advisory council (E. Marston Cmts at 1–2; Swackhamer Cmts at 2).

The proposed Final Judgment should not be measured by how it would resolve general industry concerns that are not at issue in the Complaint. The Tunney Act issue before the Court is whether the relief resolves the violation identified in the Complaint in a manner that is within the reaches of the public interest. *See Microsoft,* 56 F.3d at 1460 (''And since the claim is not made, a remedy directed to that claim is hardly appropriate.''); *SBC Commc'ns,* 489 F. Supp. 2d at 15 (courts ''cannot look beyond the complaint * * * unless the complaint is drafted so narrowly as to make a mockery of judicial power''). We note, however, that nothing in the proposed Final Judgment would prevent the Antitrust Division from challenging other conduct under the antitrust laws in the future and that the judgment does not displace any existing state and federal statutes.

4. Defendants' Compliance With Section 16(g) of the Tunney Act

Pitkin County questioned whether Defendants made adequate disclosures under 15 U.S.C. § 16(g). P.C. Cmts at 21–22. The United States supplies the following information concerning the purpose of the disclosures required pursuant to Section 16(g), but does not respond to the substance of the comments that question Defendants' compliance with the requirements of Section 16(g). We note that Defendant GEC filed its 16(g) disclosure on May 1, 2012 (Docket #12) and Defendant SGI filed its disclosure on May 2, 2012 (Docket #13), with each defendant certifying that no communications relevant to Section 16(g) were made other than communications involving only the employees of the Department of Justice and counsel of record for Defendants.

The Tunney Act treats disclosure requirements intended to inform public comment regarding a proposed consent judgment entirely separately from the

[19] *See* S. Rep. No. 298, 93d Cong., 1st Sess. (1973) at 5 (''Pursuant to the terms of the [consent] decree, the defendant agrees to abide by certain conditions in the future. *However the defendant does not admit to having violated the law as alleged in the complaint.* Obviously, the consent decree is of crucial importance as an enforcement tool, since it permits the allocation of resources elsewhere.'') (emphasis added); 119 Cong. Rec. 3451 (Floor statement of Senator Tunney, ''Essentially the decree is a device by which the defendant, while refusing to admit guilt, agrees to modify its conduct and in some cases to accept certain remedies designed to correct the violation asserted by the Government.''); H. Rep. No. 1463, 93 Cong., 2d Sess. 6 (1974) at 6 (''Ordinarily, defendants do not admit to having violated the antitrust or other laws alleged as violated in complaints that are settled.'').

[20] *E.g., United States v. Alex. Brown & Sons, Inc.,* 963 F. Supp. 235, 238–39 (S.D.N.Y. 1997) (''In enacting the Tunney Act, Congress recognized the high rate of settlement in public antitrust cases and wished to encourage settlement by consent decrees as part of the legal policies expressed in the antitrust laws.'') (internal quotations omitted).

[21] *See Swift & Co. v. United States,* 276 U.S. 311, 327 (1928) (refusing to vacate injunctive relief in consent judgment that contained recitals in which defendants asserted their innocence); *Armour,* 402 U.S. at 681 (interpreting consent decree in which defendants had denied liability for the allegations raised in the complaint); *see also* 18A Charles A. Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure § 4443, at 256–57 (2d ed. 2002) (''central characteristic of a consent judgment is that the court has not actually resolved the substance of the issues presented'').

other disclosure requirements set forth in the Act. To facilitate public comment on a proposed consent judgment in a government civil antitrust case, the Tunney Act provides, in a single subsection, that the proposed decree itself must be published in the **Federal Register**, along with a CIS, which the United States must furnish to any person requesting it. 15 U.S.C. § 16(b). The next subsection, 15 U.S.C. § 16(c), requires the United States to publish, repeatedly, summaries of the proposal and the CIS in general circulation newspapers.

By contrast, the provision at issue here, Section 16(g), is a disclosure requirement aimed at informing the courts about lobbying activities. It requires *defendants* in antitrust cases to file their disclosure statements with the Tunney Act court, but there are no requirements of public notice, **Federal Register** publication, or newspaper summaries. Moreover, the statutory provisions addressing disclosure of information supporting informed public comment (Sections 16(b), (c)) appear immediately before the provisions dealing with consideration of, and response to, public comment (Section 16(d)) and the court's public interest determination (Sections 16(e), (f)). The lobbying provision comes *after* all of those Sections. Thus, the statutory structure thus makes clear the different purposes of the two different kinds of disclosure provisions.

Even if Defendants failed to satisfy the timing requirements of Section 16(g), that would not provide a basis to begin the comment period anew and further delay entry of the proposed Final Judgment. *See generally United States v. Microsoft,* 215 F. Supp. 2d 1, 18–22 (D.D.C. 2002) (discussing 16(g) standards and whether the timing of the defendant's filing is prejudicial to the parties, the Court, or the public). Here, there is no prejudice as the certifications have been made to the Court prior to its determination of whether to enter the proposed Final Judgment, and those certifications show no communications other than those involving Department of Justice employees.

V. CONCLUSION

The purpose of this proceeding is to determine whether the proposed remedy resolves the violation identified in the Complaint in a manner that is within the reaches of the public interest. The relief that would be afforded by the proposed decree is appropriate to the violation alleged. The Tunney Act and the public interest require no more. To insist on more is to impose substantial resource costs on government antitrust enforcement, to risk the possibility of litigation resulting in no relief at all, to contravene congressional and judicial policy, and to establish a precedent that could impede enforcement of the antitrust laws in the future.

After carefully reviewing the public comments, the United States has determined that the proposed Final Judgment, as drafted, provides an effective and appropriate remedy for the antitrust violation alleged in the Complaint, and is therefore in the public interest. The United States will move this Court to enter the proposed Final Judgment after it has posted all public comments and this response on the Antitrust Division Web site and published in the **Federal Register** the Web site address at which the public comments will be posted.

Dated: August 3, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following email addresses:

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,387]

Eastman Kodak Company, IPS—Dayton Location, Dayton, OH; Notice of Affirmative Determination Regarding Application for Reconsideration

On its own motion, the Department of Labor will conduct an administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Eastman Kodak Company, IPS–Dayton Location, Dayton, Ohio (subject firm). The Department's Notice of negative determination was published in the **Federal Register** on June 6, 2012 (77 FR 33494). The workers are engaged in employment related to the production of commercial color ink jet printers.

The initial investigation resulted in a denial based on the findings that there was no shift in production of commercial color ink jet printers to a foreign country; that there were no company or customer imports of articles like or directly competitive with the commercial color ink jet printers produced by the subject firm; that the subject firm are neither suppliers to nor downstream producers for a firm that employed a worker group eligible to apply for TAA; and that the subject firm was not named by the International Trade Commission, as required by Section 222(e) of the Trade Act of 1974, as amended.

Conclusion

The Department has carefully reviewed the existing record, and will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 1st day of August, 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

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