

complaint is drafted so narrowly as to make a mockery of judicial power.” *SBC Commc’ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that “[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.” 15 U.S.C. § 16(e)(2); *see also U.S. Airways*, 38 F. Supp. 3d at 75 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: “[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.” 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court’s “scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.” *SBC Commc’ns*, 489 F. Supp. 2d at 11.<sup>3</sup> A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways*, 38 F. Supp. 3d at 75.

#### 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: April 25, 2018

Respectfully submitted,

<sup>3</sup> *See United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the “Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone”); *United States v. Mid-Am. Dairymen, Inc.*, No. 73–CV–681–W–1, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980, \*22 (W.D. Mo. 1977) (“Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.”); S. Rep. No. 93–298, at 6 (1973) (“Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.”).

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#### DEPARTMENT OF JUSTICE

##### Antitrust Division

##### Notice Pursuant to the National Cooperative Research and Production Act of 1993—ODPi, Inc.

Notice is hereby given that, on April 6, 2018, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), ODPi, Inc. (“ODPi”) 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, Attunity, Burlington, MA; ING, Amsterdam, NETHERLANDS; and SAP SE, Walldorf, GERMANY, have been added as parties to this venture.

Also, Pivotal Software, Inc., Palo Alto, CA; Altiscale, Inc., Palo Alto, CA; Squid Solutions, Inc., San Francisco, CA; TOSHIBA Corporation/Industrial ICT Solutions Company, Kanagawa, JAPAN; Z Data Inc., Newark, DE; Zettaset, Inc., Mountain View, CA; SAS Institute Inc., Cary, NC; Capgemini Service SAS, Paris, FRANCE; NEC Corporation, Tokyo, JAPAN; Philippine Long Distance Telephone Company, Makati City, PHILIPPINES; Cask Data, Inc., Palo Alto, CA; Splunk Inc., San Francisco, CA; Xavient Information System, Herndon, VA; DriveScale, Inc., Sunnyvale, CA; Redoop, Beijing, PEOPLE’S REPUBLIC OF CHINA; China Mobile Communication Company Ltd., Beijing, PEOPLE’S REPUBLIC OF CHINA; High Octane SPRL, Bierges, BELGIUM; and Innovyt LLC, Edison, NJ, have withdrawn as parties to this venture.

In addition, Beijing AsiaInfo Smart Big Data Co. Ltd. has changed its name to AsiaInfo Technologies (H.K.) Limited, Beijing, PEOPLE’S REPUBLIC OF CHINA.

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

On November 23, 2015, ODPi 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 December 23, 2015 (80 FR 79930).

The last notification was filed with the Department on March 7, 2017. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 27, 2017 (82 FR 15239).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

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#### DEPARTMENT OF JUSTICE

##### Antitrust Division

##### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Node.js Foundation

Notice is hereby given that, on April 6, 2018, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Node.js Foundation (“Node.js Foundation”) 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, Cars.com, Chicago, IL, has withdrawn as a party 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 Node.js Foundation intends to file additional written notifications disclosing all changes in membership.

On August 17, 2015, Node.js Foundation 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 28, 2015 (80 FR 58297).

The last notification was filed with the Department on January 25, 2018. A notice was published in the **Federal**