

*United States v. Mid-America Dairymen, Inc.*, 977–1 Trade Cas. ¶ 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), citing *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 11083 (1981); see also *Microsoft*, 56 F.3d at 1460–62. 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 reach of the public interest.” More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.<sup>2</sup>

*Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added).

Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. “[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is ‘within the reaches of public interest.’” *United States v. American Tel. and Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), aff’d sub nom. *Maryland v. United States*, 460 U.S. 1001 (1983), quoting *Gillette Co.*, 406 F. Supp. at 716 (citations omitted); *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985). Moreover, the Court’s role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to “construct [its] own hypothetical case and then evaluate the decree against that case.” *Microsoft*, 56 F.3d at 1459. 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. *Id.* at 1459–60.

<sup>2</sup> Cf. *BNS*, 858 F.2d at 464; 858 F.2d at 64 (holding that the court’s “ultimate authority under the [APP A] is limited to approving or disapproving the consent decree”); *Gillette*, 406 F. Supp. at 716 (noting that, in this way, the court is constrained to “look at the overall picture not hypercritically, nor with a microscope, but with artist’s reducing glass”); see generally *Microsoft*, 56 F.3d at 1461 (discussing whether “the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the ‘reaches of the public interest’”).

## VIII. Determinative Document

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

Dated: June 27, 2006.

Respectfully submitted,

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### Exhibit A—Definition of HHI and Calculations for Market

“HHI” means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty and twenty percent, the HHI is 2600 (30<sup>2</sup> + 30<sup>2</sup> + 20<sup>2</sup> + 20<sup>2</sup> = 2600). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

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

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## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association

Notice is hereby given that, on June 22, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), DVD Copy Control Association (“DVD CCA”) 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, BeyondWiz Co., Ltd., Seongnam, Republic of Korea; CD Video Manufacturing, Inc., Santa Ana, CA;

Hong Kong KONKA Ltd., Hong Kong, Hong Kong-China; Kawai Musical Instruments Mfg. Co., Ltd., Shizuoka, Japan; Shenzhen Mizuda AV Co., Ltd., Shenzhen, People’s Republic of China; Teltron S.A., Buenos Aires, Argentina; and Toyo Recording Co., Ltd., Tokyo, Japan have been added as parties to this venture.

Also, CIS Technology, Inc., Taipei Hsien, Taiwan; and Encentrus Systems Inc., Pointe-Claire, Quebec, Canada have withdrawn as parties to this venture. In addition, Favor Digital Technology Co., Ltd. has changed its name to Major Digital Technology Co., Ltd., Jiang Xi, People’s Republic of China.

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

On April 11, 2001, DVD CCA 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 August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on March 16, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 12, 2006 (71 FR 18769).

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## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Centric Operations Industry Consortium, Inc.

Notice is hereby given that, on June 20, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“Act”), Network Centric Operations Industry Consortium, Inc. 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, American Red Cross, Washington, DC; Open Geospatial