terms). On the points next discussed, the 2004 amendments did not alter the substance of the Tunney Act, and the pre-2004 precedents cited below remain applicable.

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, 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).

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. 1981)); see also Microsoft, 56 F.3d at 1460–62. Courts have held that:

> [t]he 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.

Bechtel 648 F.2d at 666 (emphasis added) (citations omitted); Cf. BNS, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an 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' ''). In making its public interest determination, a district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case. *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003).

Court approval of a final judgment requries 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. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F.Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy).

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.

In its 2004 amendments to the Tunney Act, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction ''[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). This language codified the intent of the original 1974 statute, expressed by Senator Tunney in the legislative history: ''[t]he court is nowhere compelled to go to trail 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 Senator Tunney). Rather:

> [a]bsent 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.

United States v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977); *see also United States* v. *SBC Commc'ns, Inc.,* Nos. 05–2102 and 05–2103, 2007 WL 1020746, at *9 (D.D.C. Mar. 29, 2007) (confirming that 2004 amendments to the APPA ''effected minimal changes[ ] and that th[e] Court's scope of review remains sharply proscribed by precedent and the nature of [APPA] proceedings.'').

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: May 22, 2007.

Respectfully submitted,

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Certificate of Service

I hereby certify that on May 22, 2007, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Nancy Bonnell, *Antitrust Unit Chief, ID #016382, Consumer Protection and Advocacy Section, Department of Law Building, Room #259, 1275 West Washington Street, Phoenix, AZ 85007–2997, (602) 542–7728, Attorney for the State of Arizona.*

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Ryan Danks,

United States Department of Justice, Antitrust Division.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated November 21, 2006, and published in the **Federal Register** on December 1, 2006, (71 FR 69592), Johnson Matthey Inc., Custom Pharmaceuticals Department, 2003

Nolte Drive, West Deptford, New Jersey 08066, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Methadone (9250)	II
Methadone Intermediate (9254)	II

The company plans to use the Methadone Intermediate to produce the Methadone HCL for sale to its customers who are final dosage manufacturers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Johnson Matthey Inc. to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Johnson Matthey Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: May 29, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–10692 Filed 6–1–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 07–19]

CRJ Pharmacy, Inc. and YPM Total Care Pharmacy, Inc.; Revocation of Registrations

This is a consolidated proceeding involving two pharmacies under common ownership. On February 2, 2007, I issued an Order to Show Cause and Immediate Suspension of DEA Certificates of Registration, BC9458539, issued to CRJ Pharmacy, Inc., and BY9713276, issued to YPM Total Care Pharmacy, both of Lakeland, Florida. I immediately suspended each Respondent's registration based on my preliminary finding that they had ''diverted and continue to divert massive amounts of controlled substances in violation'' of federal law ''thereby creating an imminent danger to public health or safety.'' Show Cause Order at 5. The Show Cause Order further sought the revocation of each Respondent's registration on the ground that its continued registration would be ''inconsistent with the public interest.'' *Id.* at 1 (citing 21 U.S.C. 823(f) & 824(a)(4)).

With respect to CRJ Pharmacy, the Show Cause Order alleged that it was the fourteenth largest retail purchaser of hydrocodone-combination products in the State of Florida, and that ''[f]rom January through November 2006, CRJ purchased 1,416,320 dosage units of brand name and generic hydrocodone combination products,'' a schedule III controlled substance. *Id.* The Show Cause Order further alleged that on March 30, 2006, DEA investigators had inspected CRJ and determined that it filled controlled substance orders placed through a Web site, *yourpainmanagement.com;* that the orders were for persons throughout the United States; and that the orders were authorized by only two physicians. *Id.* at 2. According to the allegations, one of the physicians was licensed to practice only in Florida; the other was licensed only in Minnesota. *Id.*

The Show Cause Order further alleged that on January 22, 2007, DEA investigators executed an administrative search warrant at CRJ and obtained records showing that between July 3, 2006, and January 22, 2007, CRJ had ''filled approximately 19,223 controlled substance drug orders and shipped them to customers throughout the United States.'' *Id.* The Show Cause Order also alleged that these prescriptions were authorized by physicians located in Texas, Wisconsin, Puerto Rico, New York, California, Kansas, and Florida, for persons who did not reside in the same States as the physicians, that the prescriptions were disproportionately for ''one or two types of highly addictive and abused controlled substances,'' that ''CRJ filled large quantities of prescriptions per day, per physician,'' and thus CRJ knew or should have known that the prescriptions it dispensed ''were not issued 'for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.' '' *Id.* at 4 (quoting 21 CFR 1306.04(a)).

The Show Cause Order alleged that CRJ's owner, Mr. Chris Larson, had admitted to investigators that he owned bestrxcare.com. *Id.* at 2. According to the Show Cause Order, Mr. Larson told investigators that persons seeking controlled substances completed an on-line questionnaire and then faxed their medical records to bestrxcare.com, where they were scanned into a database for review by either a physician or a physician's assistant (PA). *Id.* Mr. Larson allegedly told investigators that if the records were ''ok,'' a physician or a PA would then consult with the customer by telephone. *Id.* According to the Show Cause Order, after the customer had paid the Web site and the phone consultation was completed, a ''prescription'' was issued which CRJ then downloaded from the Internet and dispensed. *Id.*

The Show Cause Order further alleged that a physician employed by Larson had admitted to investigators that Larson was using his DEA ''license for pain pills.'' *Id.* at 3. According to the Show Cause Order, the physician further admitted that ''he does not speak with any of the Internet customers or their primary care physicians,'' and that he ''does not diagnose the Internet customers or provide after care services for the Internet customers.'' *Id.*

With respect to YPM, the Show Cause Order alleged that it was dispensing controlled substances that were ordered through another Web site, yourpainmanagment.com, which was also owned by Larson. *Id.* at 4. The Show Cause Order alleged that on August 17, 2005, Larson stated to DEA investigators that a person could order controlled substances for pain management through this Web site by completing a form on which they provided their name, address, billing information, general biographic details and medical complaint. *Id.* Larson allegedly also told investigators that the customers would then fax their medical records to the Web site where they were then reviewed by a PA; if the records appeared ''in order,'' either a physician or the PA would conduct a telephone consultation with the customer. *Id.* The Show Cause Order further alleged that during this interview, one of Larson's employees told DEA investigators that the Web site does not order further testing of its customers and does not contact the physicians named on the customers' medical records. *Id.*

The Show Cause Order also alleged that from May 2006 through November 2006, YPM had purchased 841,800 units of hydrocodone-combination products. *Id.* Relatedly, the Show Cause Order alleged that YPM records showed that it had dispensed 17,336 controlled substance orders to internet customers throughout the United States and that