DEPARTMENT OF JUSTICE

Antitrust Division

United States v. General Electric 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. 16(b)–(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 of America* v. *General Electric Co., et al.,* Civil Action No. 1:11–cv–01549. On August 29, 2011, the United States filed a Complaint alleging that the proposed acquisition by General Electric Company (''GE'') of CVT Holding SAS, Financière CVT SAS, and Converteam Group SAS 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 GE to divest the Converteam Electric Machinery Business, which produces low-speed synchronous electric motors used in reciprocating compressors in the oil and gas industry, and includes its production facility located in Minneapolis, Minnesota, as well as certain tangible and intangible assets associated with the business.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

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 Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, Department of Justice, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530 (telephone: 202–307–0924).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530, Plaintiff, v. *General Electric Company, 3135 Easton Turnpike, Fairfield, CT 06828,* and *CVT Holding SAS, 30 avenue Carnot, 91345 Massy Cedex, France, Financière CVT SAS, 30 avenue Carnot, 91345 Massy Cedex, France, Converteam Group SAS, 30 avenue Carnot, 91345 Massy Cedex, France,* Defendants.

Case: 1:11–cv–01549.
Assigned To: Boasberg, James E.
Assign. Date: 8/29/2011.
Description: Antitrust.

Complaint

Plaintiff, the United States of America (''United States''), acting under the direction of the Attorney General of the United States brings this civil antitrust action to enjoin the proposed acquisition of CVT Holding SAS, Financière CVT SAS, and Converteam Group SAS (collectively, ''Converteam'') by General Electric Company (''GE'') and to obtain other equitable relief. The United States alleges as follows:

I. Nature of the Action

1. Pursuant to a share purchase agreement dated March 28, 2011, GE intends to acquire control of Converteam Group SAS by purchasing approximately 90 percent of the shares of CVT Holding SAS and 100 percent of the shares of Financière CVT SAS for approximately $3.2 billion.

2. GE and Converteam are two of the three leading North American suppliers of low-speed synchronous electric motors used in reciprocating compressors in the oil and gas industry (hereafter ''LSSMs'').

3. The proposed acquisition would eliminate competition between GE and Converteam for these motors. For a significant number of customers, GE and Converteam are the two best sources of LSSMs. Elimination of competition between GE and Converteam likely would give GE the ability to raise prices or decrease the quality of service provided to these customers. As a result, the proposed acquisition likely would substantially lessen competition in the development, manufacture, and sale of LSSMs in the United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

II. The Defendants

4. Defendant General Electric Company is a New York corporation with its principal offices in Fairfield, Connecticut. GE is a global manufacturing, technology and services company. GE's subsidiary, GE Energy, provides power generation and energy delivery technologies in a number of areas in the energy industry, including coal, oil, natural gas, and nuclear energy, as well as in renewable resources such as water, wind, solar and alternative fuels. GE Energy also manufactures a full range of electric motors, including LSSMs. GE's facility in Peterborough, Canada manufactures LSSMs sold in North America. In 2010, GE's worldwide revenues were $150 billion and revenues from its Peterborough large motor and generator facility were $139.1 million.

5. Defendant Converteam Group SAS, headquartered in Massy Cedex, France, is a wholly and directly owned subsidiary of Financière CVT SAS, a French corporation, which is itself owned by CVT Holding SAS, a French corporation. CVT Holding SAS's equity is held by Barclays Private Equity France, LBO France, and Converteam Group SAS management. Converteam is a power conversion engineering company focusing on motors, generators, drives, converters and automation controls. Converteam manufactures and assembles medium-voltage large electric motors in facilities located in France, the United Kingdom, and the United States. Converteam's indirectly held United States subsidiary, Electric Machinery Holding Company, manufactures LSSMs in Minneapolis, Minnesota. In 2010, Converteam's worldwide revenues were $1.5 billion and revenues from its Minneapolis facility were $47.7 million.

III. Jurisdiction, Venue, and Interstate Commerce

6. The United States brings this action pursuant to 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, 15 U.S.C. 18.

7. Defendants GE and Converteam develop, manufacture and sell LSSMs in the flow of interstate commerce. Defendants' activities in the development, manufacture, and sale of LSSMs substantially affect interstate commerce. The Court has subject-matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. § 1331, 1337(a), and 1345.

8. Defendants have consented to venue and personal jurisdiction in the District of Columbia. Venue is therefore proper in this District under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391 (c). Venue is also proper in the District of Columbia for defendant Converteam under 28 U.S.C. 1391(d).

IV. Trade and Commerce

A. Industry Background

9. Oil and gas refineries and certain other petrochemical operations utilize reciprocating compressors for processes requiring high-pressure delivery of gases. A reciprocating compressor uses mechanical drivers (motors) to turn its crankshafts and move its pistons, thereby compressing low-pressure gas and making it higher-pressure. Compressor drivers fall into three categories—electric, steam, and gas. The production facility requiring a reciprocating compressor will choose the type of driver based on the facility's available energy or waste supply.

10. Due to the availability of a steady supply of electricity, North American oil refineries generally require an electric driver—a large electric motor—for their reciprocating compressors. Large electric motors consist of a stator and a rotor, with the speed (rotation per minute) of the motor dependent upon the number of rotor poles. Motors that contain more poles operate at slower speeds.

11. Electric motors are either synchronous or induction (also known as asynchronous). Induction motors are easier to manufacture and cheaper to purchase and maintain than synchronous motors. Synchronous motors are more expensive and involve a sophisticated engineering process. They are used in applications that require precise speed regulation; the motor rotates at a speed proportional to and accurately synchronized with the frequency of the power supply. An induction motor may run slightly slower or faster than the power supply frequency, and will slip as the load increases. Synchronous motors are more efficient than induction motors, will operate at a fixed speed, without any slippage, and provide higher performance at higher power ratings.

12. In processing and refining crude oil into petroleum products, oil refineries use low-speed reciprocating compressors for hydrogen compression to support different refinery operations. For optimal performance and reliability, this application requires a LSSM to drive the compressor. Each LSSM is custom-designed to meet technical performance requirements related to specific facility characteristics. These LSSMs generally operate between 277 to 400 revolutions per minute, meaning they have between 18 to 26 poles, are typically operating at medium voltage, and generate horsepower in the range of 1,500 to 15,000.

13. LSSMs are sold pursuant to bids, which are based on technical specifications from the customer. Suppliers of LSSMs use patented or proprietary technology and know-how—including expertise gained through years or decades of trial and error and expertise with prior installations—to custom design LSSMs that satisfy the customers' technical specifications. LSSMs for use in North America must meet specific National Electrical Manufacturers Association (''NEMA'') regulatory standards, as opposed to the International Electrotechnical Commission (''IEC'') standards applicable to the rest of the world.

14. Customers (in conjunction with the engineering firms that consult for them) evaluate competing bids based on their compliance with technical specifications and on commercial considerations such as price, delivery schedule, and terms of sale. The combined technical and commercial needs of the customer differ for each LSSM project.

15. LSSMs have a useful life ranging from 30 to 40 years. New construction of refineries is uncommon in North America. Purchases of new LSSMs in North America are therefore infrequent; customers typically purchase new reciprocating compressors only when a refinery is expanded or overhauled.

B. Relevant Market

1. Product Market

16. Oil refineries rely on heavy equipment that consumes large amounts of electricity twenty-four hours per day. To operate effectively, refineries generally are connected directly to the electricity grid, in lieu of receiving power through distribution lines, which are less efficient. This direct connection to the grid means that equipment in the refinery usually operates at a much higher power level than equipment not so connected. In order to minimize energy costs, refineries require a LSSM, which uses electrical energy more efficiently than other types of motors. Use of a LSSM guarantees that the motor always will operate at precisely the power factor of the refinery and that the refinery's reciprocating compressor will be driven at a fixed speed, reducing energy losses. By comparison, an induction motor would require significantly larger amounts of electricity to perform the same amount of work.

17. A small but significant increase in the price of LSSMs would not cause a sufficient number of customers to substitute another type of motor or to a motor built to IEC standards so as to make such a price increase unprofitable. Accordingly, the development, manufacture, and sale of LSSMs is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

2. Geographic Market

18. GE and Converteam compete on bids to customers for LSSMs in North America. GE manufactures LSSMs at facilities in Peterborough, Ontario, Canada for sale in North America. Converteam manufactures LSSMs in Minneapolis, Minnesota for sale in North America. Virtually all LSSMs purchased by oil and gas customers in North America are manufactured in facilities located in North America.

19. Those competitors that could constrain GE from raising prices to customers on bids for LSSMs in North America typically are suppliers with a physical presence in North America, including manufacturing, sales, technical and support personnel, and parts distribution. These competitors are most familiar with NEMA regulatory standards.

20. Refineries prefer such suppliers because, during the bid, design, assembly, and installation phases of a LSSM project, customers interact with suppliers to address design recommendations and changes, track assembly progress, and ensure successful installation. Further, customers purchasing LSSMs can avoid costly delays or down time in refinery operations by selecting a LSSM supplier that is able to respond quickly to requests for service or replacement parts during the operating life of the LSSM.

21. A small but significant increase in the price of LSSMs would not cause a significant number of customers in North America to turn to manufacturers of LSSMs that do not conform to North American standards so as to make such a price increase unprofitable. Accordingly, sales to customers in North America is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Anticompetitive Effect of the Acquisition

22. GE's acquisition of Converteam likely would substantially lessen competition in the North American LSSM market. GE and Converteam have consistently bid against each other on

nearly all LSSM projects since 2007. The competition between GE and Converteam in the development, production, and sale of LSSMs has benefited customers. GE and Converteam compete directly on price, terms of sale, and service. For many oil refineries, Converteam is the preferred alternative to GE. The proposed acquisition would eliminate GE's most significant competitor in the sale of LSSMs to customers in North America.

23. Only three competitors, including GE and Converteam, have sold LSSMs in North America since 2007. The third company often does not submit bids on North American LSSM projects, and has failed to achieve a significant share of the market. The fact that the third company rarely wins against GE and Converteam suggests that customers find GE and Converteam's products more attractive relative to the third provider.

24. GE's acquisition of Converteam would eliminate many customers' preferred alternative to GE and reduce from three to two—or for some bids, reduce from two to one—the number of bidders. Post-acquisition, GE would gain the incentive and ability to profitably raise its bid prices significantly above pre-acquisition levels.

25. The response of the remaining LSSM manufacturer would not be sufficient to constrain a unilateral exercise of market power by GE after the acquisition. GE would be aware that many customers strongly prefer it as a supplier, allowing it to raise prices above pre-acquisition levels. No longer constrained by Converteam's price, post-acquisition, GE would raise its prices to the monopoly level for customers that require either GE or Converteam. For customers that can consider an option other than the parties, prices would rise to the level of the third bidder. Thus, the acquisition of Converteam by GE creates an incentive for GE to bid a higher amount than it would if Converteam were still a competitor. Elimination of Converteam as a competitor also would reduce the remaining bidders' incentives to offer quick delivery or other terms of sale favorable to customers and to invest in service, quality and technology improvements.

26. Therefore, the acquisition would substantially lessen competition in the development, manufacture, and sale of LSSMs to customers in North America and lead to higher prices, less favorable terms of sale, and decreased quality of service in the LSSM market, in violation of Section 7 of the Clayton Act.

D. Entry into the Low Speed Synchronous Electric Motor Market

27. Substantial, timely entry of additional competitors is unlikely and, therefore, will not prevent the harm to competition caused by the elimination of Converteam as a bidder.

28. A small number of companies have sold LSSMs outside North America, but these companies have no relevant, substantial North American presence. Given the small size of the North American LSSM market, they are unlikely to invest in the capital infrastructure required to compete effectively in North America.

29. Firms attempting to enter the development, manufacture, and sale of LSSMs to customers in North America face barriers to entry. Establishing a reputation for successful performance and gaining customer confidence in a specific firm's LSSM are significant barriers to entry. North American customers require equipment built to NEMA standards. Many suppliers that operate globally do not have familiarity with these standards. North American oil and gas refineries are reluctant to purchase a LSSM from a supplier that does not have a reputation and track record of successful performance on reciprocating compressors operating in North America. Establishing a reputation for successful performance and/or gaining customer confidence can take years and the expenditure of substantial sunk costs.

30. Financial scale is an additional barrier to entry. Customers prefer suppliers able to stand financially behind the LSSM order, to respond quickly and effectively to a request for service or parts, and to meet warranty obligations years after the initial sale. A supplier of LSSMs therefore must be able to prove that it is financially sound.

31. For these reasons, entry or expansion by other firms into the North American market for the development, manufacture, and sale of LSSMs would not be timely, likely or sufficient to defeat the substantial lessening of competition that likely would result if GE acquires Converteam.

V. Violation Alleged

32. The acquisition of Converteam by GE would substantially lessen competition in the market for the development, manufacture, and sale of LSSMs to customers in North America in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

33. Unless restrained, the transaction will have the following anticompetitive effects, among others:

a. actual and potential competition between GE and Converteam in the market for the development, manufacture, and sale of LSSMs to customers in North American will be eliminated;

b. competition generally in the market for the development, manufacture, and sale of LSSMs to customers in North America will be substantially lessened; and

c. prices for LSSMs in North America likely will increase, the terms of sale to customers in North America likely will be less favorable, and quality of service relating to LSSMs in North America likely will decline.

VI. Requested Relief

34. Plaintiff requests that this Court:

a. Adjudge and decree GE's proposed acquisition of Converteam to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. 18;

b. Preliminarily and permanently enjoin and restrain defendants and all persons acting on their behalf from consummating the proposed acquisition of Converteam by GE or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to combine Converteam with the operations of GE;

c. Award the United States its costs for this action; and

d. Award the United States such other and further relief as the Court deems just and proper.

Respectfully submitted,

For Plaintiff United States of America

/s/ _____

Sharis A. Pozen,

Acting Assistant Attorney General.

/s/ _____

Patricia A. Brink,

Director of Civil Enforcement.

/s/ _____

Maribeth Petrizzi

Chief, Litigation II Section, D.C. Bar #435204.

/s/ _____

Dorothy B. Fountain

Assistant Chief, Litigation II Section, D.C. Bar #439469.

/s/ _____

Suzanne Morris

D.C. Bar #450208,

Michael K. Hammaker,

Brain Rafkin

Attorneys, U.S. Department of Justice, Antitrust Division, Litigation II Section, 450 Fifth Street, N.W, Suite 8700, Washington, D.C. 20530, Tel.: (202) 307–1188, Fax: (202) 514–9033, E-mail: suzanne.morris@usdoj.gov.

Dated: August 29, 2011

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *General Electric Company, and CVT Holding SAS, Financière CVT SAS, and Converteam Group SAS,* Defendants.

Case: 1:11–cv–01549.

Assigned To: Boasberg, James E.
Assign. Date: 8/29/2011.
Description: Antitrust.

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 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

Pursuant to a share purchase agreement dated March 28, 2011, defendant General Electric Company (''GE'') intends to acquire control of defendant Converteam Group SAS by purchasing approximately 90 percent of the shares of CVT Holding SAS and all of the shares of Financière CVT SAS (collectively ''Converteam'') for approximately $3.2 billion.

The United States filed a civil antitrust Complaint on August 29, 2011, seeking to enjoin the proposed acquisition. The Complaint alleges that the acquisition likely would substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, in North America for the development, manufacture, and sale of low-speed synchronous electric motors used in reciprocating compressors in the oil and gas industry (hereafter ''LSSMs''). That loss of competition likely would result in higher prices and decreased quality of service in the North American market for LSSMs.

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of GE's acquisition of Converteam. Under the proposed Final Judgment, which is explained more fully below, the defendants are required to divest the Converteam Electric Machinery Holding Company (''Electric Machinery'') business, which includes its Minneapolis, Minnesota manufacturing facility that produces all of its LSSMs, all of the tangible assets necessary to operate the facility, and all of the intangible assets (*i.e.,* intellectual property and know-how) related to the facility. Under the terms of the Hold Separate Stipulation and Order, defendants will take certain steps to ensure that the Converteam Electric Machinery business is operated as a competitively independent, economically viable and ongoing business concern; that it will remain independent and uninfluenced by the consummation of the acquisition, and that competition is maintained during the pendency of the ordered divestiture.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the 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 Final Judgment and to punish violations thereof.

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

A. The Defendants

Defendant General Electric Company is a New York corporation with its principal offices in Fairfield, Connecticut. GE is a global manufacturing, technology and services company. GE's subsidiary, GE Energy, provides power generation and energy delivery technologies in a number of areas in the energy industry, including coal, oil, natural gas, and nuclear energy, as well as in renewable resources such as water, wind, solar and alternative fuels. GE Energy also manufactures a full range of electric motors, including LSSMs. GE's facility in Peterborough, Canada manufactures LSSMs sold in North America. In 2010, GE's worldwide revenues were $150 billion and revenues from its Peterborough large motor and generator facility were $139.1 million.

Defendant Converteam Group SAS, headquarted in Massy Cedex, France, is a wholly and directly owned subsidiary of Financière CVT SAS, a French corporation, which is itself owned by CVT Holding SAS, a French corporation. CVT Holding SAS's equity is held by Barclays Private Equity France, LBO France, and Converteam Group SAS management. Converteam is a power conversion engineering company focusing on motors, generators, drives, converters and automation controls. Converteam manufactures and assembles medium-voltage large electric motors in facilities located in France, the United Kingdom, and the United States. Converteam's indirectly held United States subsidiary, Electric Machinery Holding Company, manufactures LSSMs in Minneapolis, Minnesota. In 2010, Converteam's worldwide revenues were $1.5 billion and revenues from its Minneapolis facility were $47.7 million.

B. Anticompetitive Effects in the North American Market for Low-Speed Synchronous Electric Motors for Reciprocating Compressors

(1) Electric Motors in the Oil and Gas Industry

Oil and gas refineries and certain other petrochemical operations utilize reciprocating compressors for processes requiring high-pressure delivery of gases. A reciprocating compressor uses mechanical drivers (motors) to turn its crankshafts and move its pistons, thereby compressing low-pressure gas and making it higher-pressure. Compressor drivers fall into three categories—electric, steam, and gas. The production facility requiring a reciprocating compressor will choose the type of driver based on the facility's available energy or waste supply.

Due to the availability of a steady supply of electricity, North American oil refineries generally require an electric driver—a large electric motor—for their reciprocating compressors. Large electric motors consist of a stator and a rotor, with the speed (rotation per minute) of the motor dependent upon the number of rotor poles. Motors that contain more poles operate at slower speeds.

Electric motors are either synchronous or induction (also known as asynchronous). Induction motors are easier to manufacture and cheaper to purchase and maintain than synchronous motors. Synchronous motors are more expensive and involve a sophisticated engineering process. They are used in applications that require precise speed regulation; the motor rotates at a speed proportional to and accurately synchronized with the frequency of the power supply. An induction motor may run slightly slower or faster than the power supply frequency, and will slip as the load increases. Synchronous motors are more efficient than induction motors, will operate at a fixed speed, without any slippage, and provide higher performance at higher power ratings.

In processing and refining crude oil into petroleum products, oil refineries use low-speed reciprocating compressors for hydrogen compression to support different refinery operations. For optimal performance and reliability, this application requires a LSSM to drive the compressor. Each LSSM is custom-designed to meet technical performance requirements related to specific facility characteristics. These LSSMs generally operate between 277 to 400 revolutions per minute, meaning they have between 18 to 26 poles, are typically operating at medium voltage,

and generate horsepower in the range of 1,500 to 15,000.

LSSMs are sold pursuant to bids, which are based on technical specifications from the customer. Suppliers of LSSMs use patented or proprietary technology and know-how—including expertise gained through years or decades of trial and error and expertise with prior installations—to custom design LSSMs that satisfy the customers' technical specifications. LSSMs for use in North America must meet specific National Electrical Manufacturers Association (''NEMA'') regulatory standards, as opposed to the International Electrotechnical Commission (''IEC'') standards applicable to the rest of the world.

Customers (in conjunction with the engineering firms that consult for them) evaluate competing bids based on their compliance with technical specifications and on commercial considerations such as price, delivery schedule, and terms of sale. The combined technical and commercial needs of the customer differ for each LSSM project.

LSSMs have a useful life ranging from 30 to 40 years. New construction of refineries is uncommon in North America. Purchases of new LSSMs in North America are therefore infrequent; customers typically purchase new reciprocating compressors only when a refinery is expanded or overhauled.

(2) The North American Market for Low-Speed Synchronous Motors Used in Reciprocating Compressors in the Oil and Gas Industry

Oil refineries rely on heavy equipment that consumes large amounts of electricity twenty-four hours per day. To operate effectively, refineries generally are connected directly to the electricity grid, in lieu of receiving power through distribution lines, which are less efficient. This direct connection to the grid means that equipment in the refinery usually operates at a much higher power level than equipment not so connected. In order to minimize energy costs, refineries require a LSSM, which uses electrical energy more efficiently than other types of motors. Use of a LSSM guarantees that the motor always will operate at precisely the power factor of the refinery and that the refinery's reciprocating compressor will be driven at a fixed speed, reducing energy losses. By comparison, an induction motor would require significantly larger amounts of electricity to perform the same amount of work.

A small but significant increase in the price of LSSMs would not cause a sufficient number of customers to substitute another type of motor or to a motor built to IEC standards so as to make such a price increase unprofitable. Accordingly, the development, manufacture, and sale of LSSMs is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

GE and Converteam compete on bids to customers for LSSMs in North America. GE manufactures LSSMs at facilities in Peterborough, Ontario, Canada for sale in North America. Converteam manufactures LSSMs in Minneapolis, Minnesota for sale in North America. Virtually all LSSMs purchased by oil and gas customers in North America are manufactured in facilities located in North America.

Those competitors that could constrain GE from raising prices to customers on bids for LSSMs in North America typically are suppliers with a physical presence in North America, including manufacturing, sales, technical and support personnel, and parts distribution. These competitors are most familiar with NEMA regulatory standards.

Refineries prefer such suppliers because, during the bid, design, assembly, and installation phases of a LSSM project, customers interact with suppliers to address design recommendations and changes, track assembly progress, and ensure successful installation. Further, customers purchasing LSSMs can avoid costly delays or down time in refinery operations by selecting a LSSM supplier that is able to respond quickly to requests for service or replacement parts during the operating life of the LSSM.

A small but significant increase in the price of LSSMs would not cause a significant number of customers in North America to turn to manufacturers of LSSMs that do not conform to North American standards so as to make such a price increase unprofitable. Accordingly, sales to customers in North America is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

(3) Anticompetitive Effects

GE's acquisition of Converteam likely would substantially lessen competition in the North American LSSM market. GE and Converteam have consistently bid against each other on nearly all LSSM projects since 2007. The competition between GE and Converteam in the development, production, and sale of LSSMs has benefited customers. GE and Converteam compete directly on price, terms of sale, and service. For many oil refineries, Converteam is the preferred alternative to GE. The proposed acquisition would eliminate GE's most significant competitor in the sale of LSSMs to customers in North America.

Only three competitors, including GE and Converteam, have sold LSSMs in North America since 2007. The third company often does not submit bids on North American LSSM projects, and has failed to achieve a significant share of the market. The fact that the third company rarely wins against GE and Converteam suggests that customers find GE and Converteam's products more attractive relative to the third provider.

GE's acquisition of Converteam would eliminate many customers' preferred alternative to GE and reduce from three to two—or for some bids, reduce from two to one—the number of bidders. Post-acquisition, GE would gain the incentive and ability to profitably raise its bid prices significantly above pre-acquisition levels.

The response of the remaining LSSM manufacturer would not be sufficient to constrain a unilateral exercise of market power by GE after the acquisition. GE would be aware that many customers strongly prefer it as a supplier, allowing it to raise prices above pre-acquisition levels. No longer constrained by Converteam's price, post-acquisition, GE would raise its prices to the monopoly level for customers that require either GE or Converteam. For customers that can consider an option other than the parties, prices would rise to the level of the third bidder. Thus, the acquisition of Converteam by GE creates an incentive for GE to bid a higher amount than it would if Converteam were still a competitor. Elimination of Converteam as a competitor also would reduce the remaining bidders' incentives to offer quick delivery or other terms of sale favorable to customers and to invest in service, quality and technology improvements.

Therefore, the acquisition would substantially lessen competition in the development, manufacture, and sale of LSSMs to customers in North America and lead to higher prices, less favorable terms of sale, and decreased quality of service in the LSSM market, in violation of Section 7 of the Clayton Act.

(4) Entry

Substantial, timely entry of additional competitors is unlikely and, therefore, will not prevent the harm to competition caused by the elimination of Converteam as a bidder.

A small number of companies have sold LSSMs outside North America, but these companies have no relevant,

substantial North American presence. Given the small size of the North American LSSM market, they are unlikely to invest in the capital infrastructure required to compete effectively in North America.

Firms attempting to enter the development, manufacture, and sale of LSSMs to customers in North America face barriers to entry. Establishing a reputation for successful performance and gaining customer confidence in a specific firm's LSSM are significant barriers to entry. North American customers require equipment built to NEMA standards. Many suppliers that operate globally do not have familiarity with these standards. North American oil and gas refineries are reluctant to purchase a LSSM from a supplier that does not have a reputation and track record of successful performance on reciprocating compressors operating in North America. Establishing a reputation for successful performance and/or gaining customer confidence can take years and the expenditure of substantial sunk costs.

Financial scale is an additional barrier to entry. Customers prefer suppliers able to stand financially behind the LSSM order, to respond quickly and effectively to a request for service or parts, and to meet warranty obligations years after the initial sale. A supplier of LSSMs therefore must be able to prove that it is financially sound.

For these reasons, entry or expansion by other firms into the North American market for the development, manufacture, and sale of LSSMs would not be timely, likely or sufficient to defeat the substantial lessening of competition that likely would result if GE acquires Converteam.

III. Explanation of the Proposed Final Judgment

The divestiture required by the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the North American market for LSSMs by establishing a new, independent, and economically viable competitor. The proposed Final Judgment requires defendants, within sixty (60) days after the filing of the complaint, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest the Converteam Electric Machinery Business, which includes the one plant currently producing LSSMs, as well as all of the tangible and intangible assets associated with the business. The assets must be divested in such a way as to satisfy the United States in its sole discretion that the Converteam Electric Machinery Business can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant market.

In the event that defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that GE will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six (6) months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The divestiture required by the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the North American market for LSSMs. To that end, the Divestiture Assets include the entire Converteam Electric Machinery Business, including its production facility located at *800 Central Avenue, Minneapolis, Minnesota 55413 (''Minneapolis Facility''). This facility produces Converteam LSSMs sold to customers in North America. In addition, the facility* has an established record as a high-quality, efficient production facility with product offerings that have been qualified by its customers and sufficient capacity to meet current and future demand for its products.

The Converteam Electric Machinery Business produces other products at its Minneapolis Facility, including other types of synchronous motors, induction motors, brushless exciters, turbo generators, and synchronous generators; it also provides services and parts associated with these products. Although these products are not areas of concern, their divestiture was necessary to create a viable competitor, and their inclusion as Divestiture Assets will ensure that the Converteam Electric Machinery Business will remain a profitable, stand-alone entity with a broad range of products and services.

The proposed Final Judgment also requires divestiture of tangible and intangible assets associated with the Converteam Electric Machinery Business. These assets will provide the acquirer with the physical tools (*e.g.,* equipment, inventory, business records, and the like), and the bank of knowledge and rights (*e.g.,* manufacturing know-how, contractual rights, and the like) needed to create an independent producer of LSSMs equivalent to Converteam's current operations. The Divestiture Assets also include all intangible assets owned, controlled, or maintained by the Converteam Electric Machinery Business used in the design, development, production, marketing, servicing, distribution or sale of any product produced by the Converteam Electric Machinery Business. In addition, the Divestiture Assets include a non-exclusive, non-transferable license for any intangible assets not owned, controlled, or maintained by the Converteam Electric Machinery Business, but that prior to the filing of the Complaint in this matter were used in connection with the design, development, production, marketing, servicing, or sale of any product produced by the Converteam Electric Machinery Business; this license is transferable to any future purchaser of all or substantially all of the Converteam Electric Machinery Business.

The Converteam Electric Machinery Business, in addition to manufacturing LSSMs, manufactures several other products for which competition will not be reduced by GE's acquisition of Converteam. So that GE can enter these markets and compete, the Final Judgment requires that the acquirer of the Converteam Electric Machinery Business grant to GE a non-exclusive, non-transferable license for any intangible assets that, prior to the filing of the Complaint, were used in the design, development, manufacture, marketing, servicing, or sale of induction motors, brushless exciters, turbo generators, and synchronous generators designed, developed, produced, or sold by the Converteam Electric Machinery Business. This license is transferable to any future purchaser of all or substantially all of the GE business unit using this license, and does not include LSSMs or any other type of synchronous motors.

Lastly, the Final Judgment permits GE to retain Converteam's SAP business management server, which is used by both the Converteam Electric Machinery Business and Converteam's other businesses. To ensure a smooth transition of the Converteam Electric Machinery Business's information to the acquirer, at the option of the acquirer,

and for a period not to exceed one (1) year, the Final Judgment requires that GE grant access and use rights to the SAP business management server and provide transition services and technical assistance to the acquirer of the Converteam Electric Machinery Business. In addition, the Final Judgment requires that GE prevent GE or Converteam employees from accessing Converteam Electric Machinery Business information, except for the purpose of providing transition services or technical assistance to the acquirer. Finally, upon termination of the agreements, GE is required to take all steps necessary to purge information related to the Converteam Electric Machinery Business from the SAP business management server.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects that likely would result if GE acquired Converteam because the acquirer will have the ability to develop, produce, and sell LSSMs to customers in North America in competition with GE.

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 United States and Defendants 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 upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (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**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW., Suite 8700, Washington, DC 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. The United States could have continued the litigation and sought preliminary and permanent injunctions against GE's acquisition of Converteam. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the development, manufacture and sale of LSSMs in the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

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

The Clayton Act, as amended by 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.'' 15 U.S.C. 16(e)(1). In making that determination in accordance with the statute, the court is required 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). In considering these statutory factors, the court's 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.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *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); *United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable.'').

As the United States Court of Appeals for the District of Columbia 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 Microsoft,* 56 F.3d at 1458–62. 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; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. 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).[1] In determining whether a proposed settlement is in the public interest, the court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *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''); *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); *United States* v. *Republic Serv., Inc.,* 2010–2 Trade Cas. (CCH) ¶ 77,097, 2010 U.S. Dist. LEXIS 70895, No. 08–2076 (RWR), at *10 (D.D.C. July 15, 2010) (finding that ''[i]n light of the deferential review to which the government's proposed remedy is accorded, [amicus curiae's] argument that an alternative remedy may be comparably superior, even if true, is not a sufficient basis for finding that the proposed final judgment is not in the public interest.'').

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[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). Therefore, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *Republic Serv.,* 2010 U.S. Dist. LEXIS 70895, at *2–3 (entering final judgment ''[b]ecause there is an adequate factual foundation upon which to conclude that the government's proposed divestitures will remedy the antitrust violations alleged in the complaint.'').

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; *see also InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). 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. As this Court confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' 489 F. Supp. 2d at 15.

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). 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 Senator 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.[3]

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: August 29, 2011.

Respectfully submitted,

/s/

Suzanne Morris,*United States Department of Justice, Antitrust Division, Litigation II Section, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530, (202) 307–1188 suzanne.morris@usdoj.gov.*

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *General Electric Company, and CVT Holding SAS, Financière CVT SAS, and Converteam Group SAS, Defendants.*

Case no.:

Judge:

Proposed Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on August 29, 2011, and the United States and defendants, General Electric Company (''GE'') and CVT Holding SAS, Financière CVT SAS, and Converteam

[1] *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'''').

[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] *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.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (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, 93d Cong., 1st Sess., 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.'').

Group SAS (''Converteam''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without 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 essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by GE to assure that competition is not substantially lessened;

And whereas, the United States requires GE 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, 15 U.S.C. 18, as amended.

II. Definitions

As used in this Final Judgment:

A. ''GE'' means defendant General Electric Company, a New York corporation with its headquarters in Fairfield, Connecticut, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. ''Converteam'' means defendants CVT Holding SAS, Financière CVT SAS, and French corporations with their headquarters in Massy Cedex, France, and their successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Converteam Electric Machinery Business'' means Converteam's wholly owned subsidiary Electric Machinery Holding Co., a Delaware corporation with its principal place of business in Minneapolis, Minnesota, and its subsidiaries.

D. ''Acquirer'' means the entity to whom GE shall divest the Divestiture Assets.

E. ''Low Speed Synchronous Motors'' means medium-voltage synchronous electric motors generating horsepower in the range of 1,500 to 15,000 and operating between 277 to 400 revolutions per minute, which are used to drive reciprocating compressors in the oil and gas industry.

F. ''SAP Business Management Server'' means Converteam's SAP business management database, and any related servers and hardware located in Pittsburgh, Pennsylvania, that are used in connection with Converteam's enterprise resource planning system.

G. ''Divestiture Assets'' means the Converteam Electric Machinery Business, including:

(1) The Converteam Electric Machinery Business production facility located at 800 Central Avenue, Minneapolis, Minnesota 55413;

(2) All tangible assets that comprise the Converteam Electric Machinery Business, including research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property and all assets used in connection with the Converteam Electric Machinery Business; all licenses, permits and authorizations issued by any governmental organization relating to the Converteam Electric Machinery Business; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, relating to the Converteam Electric Machinery Business, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to the Converteam Electric Machinery Business; and

(3) The following intangible assets:

(a) All intangible assets owned, controlled, or maintained by the Converteam Electric Machinery Business, including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, 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, all research data concerning historic and current research and development relating to the Converteam Electric Machinery Business, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information provided to Converteam Electric Machinery Business employees, customers, suppliers, agents or licensees, and all research data concerning historic and current research and development efforts relating to the Converteam Electric Machinery Business, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments.

(b) With respect to any intangible assets that are not included in paragraph II(G)(3)(a) above, and that prior to the filing of the Complaint in this matter were used in connection with the design, development, production, marketing, servicing, and/or sale of any product produced by the Converteam Electric Machinery Business, a non-exclusive, perpetual, worldwide, non-transferrable, royalty-free license for such intangible assets to be used for the design, development, manufacture, marketing, servicing, and/or sale of any of product produced by the Converteam Electric Machinery Business; provided, however, that any such license is transferrable to any future purchaser of all or substantially all of the Converteam Electric Machinery Business. Any improvements or modifications to these intangible assets developed by the Acquirer of the Converteam Electric Machinery Business shall be owned solely by that acquirer.

The Divestiture Assets shall not include Converteam's SAP Business Management Server and related applications, information, and documentation not used primarily by the Converteam Electric Machinery Business.

III. Applicability

A. This Final Judgment applies to GE and Converteam, 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. If, prior to complying with Section IV and V of this Final Judgment, defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the acquirers of the assets divested pursuant to this Final Judgment.

IV. Divestitures

A. GE is ordered and directed, within sixty (60) calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. GE agrees to use its best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, GE promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. GE 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. GE 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 privilege or work-product doctrine. GE shall make available such information to the United States at the same time that such information is made available to any other person.

C. GE shall provide the Acquirer and the United States information relating to the personnel involved in the production, operation, development and sale of the Divestiture Assets to enable the Acquirer to make offers of employment. Defendants shall not interfere with any negotiations by the Acquirer to employ any defendant employee whose primary responsibility is the operation of the Divestiture Assets, and the development, manufacture, and sale of any product produced by the Divestiture Assets.

D. GE shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the business to be divested; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. GE shall warrant to the Acquirer that the Divestiture Assets will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, use, or divestiture of the Divestiture Assets.

G. Notwithstanding paragraphs II(G)(3)(a) and (b) above, the Acquirer shall grant to defendants a non-exclusive, perpetual, worldwide, non-transferrable, royalty-free license to patents, copyrights, know-how, and other intellectual property (including but not limited to product designs, drawings, manufacturing techniques, specifications, product bills of materials, and supply chain information) owned by the Converteam Electric Machinery Business that prior to the filing of the Complaint in this matter were used in the design, development, manufacture, marketing, servicing, and/or sale of induction motors, brushless exciters, turbo generators, and/or synchronous generators designed, developed, produced, or sold by the Converteam Electric Machinery Business. This license is transferrable to any future purchaser of all or substantially all of the GE business unit using this license. This paragraph shall not be deemed to require the Acquirer to grant a license to defendants for any intellectual property owned by the Converteam Electric Machinery Business that is used primarily or exclusively in the design, development, manufacture, marketing, servicing, and/or sale of synchronous motors.

H. At the option of the Acquirer, GE shall, for a period not to exceed one (1) year: (1) allow the Acquirer to access and use the SAP Business Management Server in the same manner that the Converteam Electric Machinery Business had accessed and used the server prior to the filing of the Complaint in this matter, and (2) provide to the Acquirer transition services and technical assistance for the SAP Business Management Server that are reasonably necessary for the Acquirer to operate the Converteam Electric Machinery Business. Except for the provision of transition services and technical assistance to the Acquirer, GE shall not allow any GE or Converteam employee to access Converteam Electric Machinery Business information on the server. Upon the termination of the access and use rights and the transition services and technical support agreement, GE shall take all steps necessary to purge any information related to the Converteam Electric Machinery Business from the SAP Business Management Server.

I. Defendants shall warrant to the Acquirer 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.

J. Unless the United States otherwise consents in writing, the divestiture 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 as part of a viable, ongoing business in the development, production, and sale of low-speed synchronous motors to customers in North America. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment:

(1) shall be made to an Acquirer 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 development, manufacture, and sale of low-speed synchronous motors to customers in North America; 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 and defendants give defendants 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 to compete effectively.

V. Appointment of Trustee

A. If GE has not divested the Divestiture Assets within the time period specified in Section IV(A), GE 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 divestiture 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 divestiture to an Acquirer 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 Sections 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 GE any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

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 expense of GE, on such terms and conditions as the United States approves, 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 GE 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 divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. 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 secret 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 divestiture.

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 divestiture 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 the divestiture ordered under this Final Judgment within six (6) months after the trustee's appointment, the trustee shall promptly file with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestiture; (2) the reasons, in the trustee's judgment, why the required divestiture has 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 United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem 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, GE shall notify the United States of any proposed divestiture required by Section IV of this Final Judgment. Within two (2) business days following execution of a definitive divestiture agreement, the trustee shall notify the United States and defendants of any proposed divestiture required by Section V of this Final Judgment. The notice shall set forth the details of the proposed divestiture 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 the 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, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. 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, 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 or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture 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 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 divestiture made pursuant to Section IV 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 divestiture has been completed under Section IV or V, GE 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 (30) calendar 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 GE has taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, 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 GE, including limitations on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, GE 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. GE 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 divestiture has 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 authorized representatives of the United States Department of Justice Antitrust Division, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant 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 the option of the United States, to require defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of defendants, 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 reasonable convenience of the interviewee and without restraint or interference by defendants.

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

C. 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 Antitrust Division, 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)(1)(G) 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)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give defendants ten 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. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, 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

[FR Doc. 2011–22623 Filed 9–2–11; 8:45 am]

BILLING CODE P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2011–7 CRB CD 2009]

Distribution of the 2009 Cable Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice requesting comments.

SUMMARY: The Copyright Royalty Judges are soliciting comments on a motion of Phase I claimants for partial distribution in connection with the 2009 cable royalty funds. The Judges are also requesting comments as to the existence of Phase I and Phase II controversies with respect to the distribution of 2009 cable royalty funds.

DATES: Comments are due on or before October 6, 2011.

ADDRESSES: Comments may be sent electronically to *crb@loc.gov.* In the alternative, send an original, five copies, and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, comments must be brought to the Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial courier, comments must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Washington, DC. The envelope must be addressed to: Copyright Royalty Board,