

2. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on September 26, 2002:

The plat representing the dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines, and the subdivision of sections 6, 8 and 18, Township 26 North, Range 31 East, Mount Diablo Meridian, Nevada, under Group No. 783, was accepted September 24, 2002.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

3. The Plats of Survey of the following described lands were officially filed at the Nevada State Office, Reno, Nevada, on September 30, 2002:

The plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 33, and a metes-and-bounds survey of portions of the centerline of U.S. Highway 95, in section 33, Township 7 South, Range 44 East, Mount Diablo Meridian, Nevada, under Group No. 800, was accepted September 27, 2002.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 3, and a metes-and-bounds survey of the centerline of U.S. Highway 95, in section 3, Township 8 South, Range 44 East, Mount Diablo Meridian, Nevada, under Group No. 800, was accepted September 27, 2002.

These surveys were executed to meet certain administrative needs of the Bureau of Land Management and the Bureau of Indian Affairs.

4. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: October 11, 2002.

Robert V. Abbey,

State Director, Nevada.

[FR Doc. 02-26654 Filed 10-18-02; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil Action No. 02-888-A]

United States v. The Mathworks, Inc. and Wind River Systems, Inc.; 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, and Stipulation and Order pertaining to each Defendant individually, and a Competitive Impact Statement related thereto have been filed with the United States District Court for the Eastern District of Virginia in *United States of America v. The MathWorks, Inc. and Wind River Systems, Inc.*, Civil Action No. 02-888-A. The proposed final Judgments represent a full settlement of this matter, as they resolve all issues between the United States and each Defendant. On June 21, 2002, the United States filed a Complaint against The MathWorks, Inc. and Wind River Systems, Inc. alleging that the Defendants entered into a series of agreements that had the purpose and effect of eliminating the MATRIXx product suite from the market in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. Through these agreements, The MathWorks and WindRiver agreed to shift dynamic control system design software customers from Wind River to The MathWorks. The proposed Final Judgments require both The MathWorks and Wind River to facilitate the sale of the MATRIXx products and intellectual property to a buyer acceptable to the United States and the appointment of a trustee to effect the sale. Copies of the Complaint, proposed Final Judgments and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC, in Room 200, 325 Seventh Street, NW., at the Office of the Clerk of the United States District Court for the Eastern District of Virginia, Alexandria, Virginia, and on the Antitrust Division's Web site at <http://www.usdoj.gov/atr/cases/indx346.htm>.

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 Renata B. Hesse, Chief, Networks and Technology Section, Antitrust Division, U.S. Department of Justice, 600 E Street,

NW., Suite 9500, Washington, DC 20530.

Constance K. Robinson,
Director of Operations.

Stipulation and Order

It is hereby stipulated by and between the undersigned parties, through their respective counsel, as follows:

1. The Court has jurisdiction over the subject matter of Plaintiff's Complaint alleging Defendants Wind River Systems, Inc. ("Wind River") and The MathWorks, Inc. ("The MathWorks") entered into an agreement that violates Section 1 of the Sherman Act (15 U.S.C. 1), and over each of the parties hereto, and venue of this action is proper in the United States District Court for the Eastern District of Virginia.

2. The United States and The MathWorks stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of either party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedure and Penalties Act (15 U.S.C. 16), and without further notice to either party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on The MathWorks and by filing that notice with the Court.

3. The MathWorks shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though they were in full force and effect as an order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by both parties and submitted to the Court.

5. In the event that the United States withdraws its consent, as provided in paragraph 2 above, or in the event that the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this

Stipulation shall be without prejudice to either party in this or any other proceeding.

Respectfully submitted,
Dated: August 15, 2002.

For Plaintiff United States of America,

James J. Tierney,
U.S. Department of Justice, Antitrust
Division, Networks and Technology Section,
600 E Street, NW., Suite 9500, Washington,
DC 20530. Tel: (202) 307-0797. Fax: (202)
616-8544.

Richard Parker (VSB No. 44751),
Assistant United States Attorney, 2100
Jamieson Avenue, Alexandria, VA 22314.
Tel: (703) 299-3700.

For Defendant The MathWorks, Inc.

Thane D. Scott,
Ruth T. Dowling,
Mitchell C. Bailin,
Palmer & Dodge LLP., 111 Huntington
Avenue, Boston, MA 02199-7613, Tel: (617)
239-0100. Fax: (617) 227-4420.

Mark Gidley,
David A. Balto,
Jamie M. Crowe (VSB No. 37186),
601 Thirteenth Street, NW., Washington, DC
20005-3807. Tel.: (202) 626-3600. Fax: (202)
639-9355.

Order

It is so ordered by this Court, this
_____ day of _____ 2002.

Chief United States District Judge.

Certificate of Service

The undersigned certifies that the Stipulation And Order was served by fax and U.S. Mail on the following counsel this 15th day of August, 2002:

Counsel for Wind River, Inc. Richard L. Rosen, Arnold & Porter, 555 Twelfth Street, NW., Washington, DC 20004-1206. Tel: (202) 942-5000. Fax: (202) 942-5999.

James J. Tierney.

In the matter of: United States District Court, for the Eastern District of Virginia, Alexandria Division; Civil Action No. 02-888-A, Chief Judge Hilton. United States of America, Plaintiff, v. The MathWorks, Inc. and Wind River Systems, Inc., Defendants.

Final Judgment

Whereas, Plaintiff United States of America filed its Complaint on June 21, 2002, alleging that The MathWorks, Inc. ("The MathWorks") and Wind River Systems, Inc. ("Wind River") entered into a series of agreements related to Wind River's MATRIXx product line that violate Section 1 of the Sherman Act;

And Whereas the United States and Wind River on June 21, 2002, consented to entry of a Final Judgment that would require Wind River to use its reasonable best efforts to divest its interest in the

MATRIXx assets in the event a Final Judgment is entered against The MathWorks;

And whereas the United States and The MathWorks, by their respective attorneys, have consented to the entry of this Final Judgment constituting any evidence against, or any admission by, any party regarding any issue of fact or law;

And whereas The MathWorks agrees to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the United States believes that entry of this Final judgment is in the public interest;

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 The MathWorks under Section 1 of the Sherman Act (15 U.S.C. 1).

II. Definitions

As used in this Final Judgment:

(A) "MATRIXx Agreements" means the February 16, 2001, Distribution Agreement and other related and contemporaneous agreements between Wind River and The MathWorks.

(B) "MATRIXx assets" means all rights and tangible and intangible assets, including but not limited to, all contracts, software code, copyrights, patents, licenses, sublicenses, trademarks and other intellectual property, within the scope of the MATRIXx Agreements (excluding Retained Rights and U.S. Patents Nos. 4,796,179, 5,133,045, and 5,612,866 assigned to The MathWorks in the February 16, 2001, Patent Assignment between ISI and The MathWorks).

(C) "The MathWorks" means The MathWorks, Inc., a Delaware corporation with its headquarters in Natick, Massachusetts, its parents, successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees, and any other person acting for, on behalf of, or under the control of them.

(D) "Wind River" means Wind River Systems, Inc., a Delaware corporation with its headquarters in Alameda, California, its parents, successors and assigns, and its subsidiaries (including Integrated Systems, Inc. ("ISI")), divisions, groups, affiliates,

partnerships, and joint ventures, and their directors, officers, managers, agents, and employees, and any other person acting for, on behalf of, or under the control of them.

(E) "Retained Contracts" mean all Wind River and ISI contracts regarding the MATRIXx products that remain in effect as of the date this Final Judgment becomes effective and were identified and retained by Wind River in the MATRIXx Agreements.

(F) "Retained Rights" mean (a) a worldwide, royalty-free, non-exclusive right under the MATRIXx assets to use, modify, improve, copy, display, perform, create derivative work of and enhance the MATRIXx products and distribute the same solely in connection with Wind River's provision of support services (including, without limitation, the right to provide source code to the extent contractually obligated) related to Retained Contracts; (b) a worldwide, royalty-free, non-exclusive license under the patents included within the MATRIXx assets to make, have made, use, sell, offer for sale, or import (I) articles that may be covered by one or more claims of such patents provided such acts are in connection with the provision of support services related to Retained Contracts or (ii) any Wind River products available for purchase as of February 16, 2001 (except the MATRIXx products), including all modifications, derivatives, new versions and new releases of the same.

III. Applicability

This Final Judgment applies to The MathWorks and all other persons in active concert or participation with the MathWorks who receive actual notice of this Final judgment by personal service or otherwise.

IV. Asset Sale

The United States and the MathWorks agree as follows:

(A) As soon as possible, but no later than 30 days from the date of filing of this proposed Final Judgment with the Court, the United States shall nominate an independent agent to serve as Trustee to accomplish the sale of the MATRIXx assets to a purchaser approved by the United States pursuant to the terms of this Final Judgment and any subsequent order of the Court.

(B) The Trustee shall serve at the cost and expense of defendants, on such customary and commercially reasonable terms and conditions as the United States, in its sole discretion, proposes, subject to approval by the Court. The Trustee shall receive compensation that is customary and commercially reasonable for asset sales of the size and

complexity as those included herein, including a substantial success incentive and any reasonable and necessary legal expenses relating to its role as Trustee. The Trustee shall account to the Court and defendants for all monies derived from the sale of the MATRIXx assets and all costs and expenses so incurred.

(C) Upon application of the United States, the Court shall appoint the Trustee nominated by the United States and approve the engagement letter, provided that the engagement letter's terms and conditions are customary and commercially reasonable and consistent with this Final Judgment.

(D) The Trustee shall have the duty to attempt to sell the MATRIXx assets and negotiate a definitive sales and licensing agreement with a purchaser pursuant to the terms of this Final Judgment, the terms of the engagement letter and any subsequent order of the Court. The Trustee shall promptly make known, by usual and customary means, the availability of the MATRIXx assets, and shall attempt to sell the assets in a manner consistent with its typical commercial practices, including protection of the defendants' confidential information. Defendants shall have no authority or responsibility with respect to the attempt to sell the MATRIXx assets or negotiate the definitive sales and licensing agreement, except to promptly provide any information relating to the MATRIXx assets requested by the Trustee in writing or as otherwise provided herein.

(E) Defendants shall promptly provide to the Trustee all information and documents requested in order to prepare offering materials and provide customary due diligence information to prospective purchasers with respect to the MATRIXx assets. Defendants shall comply fully with all such requests within three business days, unless the Trustee, in its sole discretion, waives or extends the time period, or excuses defendants from providing certain specified information.

(F) The Trustee shall commence offering the MATRIXx assets for sale immediately after certification to the Court that it has received adequate information from the defendants to offer the MATRIXx assets for sale. The certification shall be made within five business days of receipt of the adequate information. After the sales offering has commenced, the Trustee may make such additional written requests for information as may be reasonably necessary to perform its duties, and the defendants shall comply fully with such requests within 3 business days, unless the Trustee, in its sole discretion,

waives or extends the time period, or excuses defendants from providing certain specified information.

(G) The Trustee shall have 90 days from the date of such certification in which to offer the MATRIXx assets for sale and consummate a definitive sales and licensing agreement with a purchaser. There shall be no extensions of this 90-day period, except, however, the running of the 90-day period shall toll for any undue delay the Court finds is caused by defendants.

(H) The Trustee shall negotiate a definitive sales and licensing agreement on customary and commercially reasonable terms, substantially equivalent, except for the payment terms, to the terms and conditions in the MATRIXx Agreements to the extent possible, and that provides to the purchaser representations, warranties and covenants equivalent to those in the MATRIXx Agreements. The defendants may allocate primary responsibility for and indemnification under such warranties among themselves as customary and appropriate to their respective rights and obligations concerning the MATRIXx assets on the date of such sale. The definitive sales and licensing agreement will provide for transitional support to the purchaser, equivalent to that offered under the MATRIXx Agreements.

(I) The Trustee shall make written reports of its activities to the Court, the United States and defendants 30 days, 45 days, 60 days, 75 days, and 90 days after initiation of its attempts to sell the MATRIXx assets. Such reports shall include the name, address, and telephone number of each person who made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, an interest in the MATRIXx assets, and shall describe in detail each contact with such person, including the terms of any offers made or received. 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 maintain full records of all efforts made to divest the MATRIXx assets. The Trustee may discuss its progress with the United States and defendants as it deems reasonable under the circumstances.

(J) The MATRIXx assets to be conveyed shall include substantially all assets, rights and property interests of both The MathWorks and Wind River as currently exist pursuant to the MATRIXx Agreements, except, however, that The MathWorks may retain ownership of the three patents

referenced in paragraph II(B), in which case the definitive sales and license agreement shall include a patent license to the purchaser. Any such patent license must:

(1) Cover as many of the three patents as the purchaser wishes to license;

(2) Be perpetual, fully paid-up, and without continuing royalties to either defendant;

(3) Not contain any field-of-use restrictions whatsoever;

(4) Permit the purchaser to sublicense the intellectual property so licensed (the "IP") in order to:

(a) Adequately convey rights to exploit the technology to end user customers of any product or service that includes the IP;

(b) Enter into development or support outsourcing or co-development agreements with third parties in conjunction with the purchaser's products or services, or joint venture agreements with third parties in which the purchaser and the third party both retain an interest in the resulting product, service, research or IP;

(c) Effectuate transfer of the license either upon change of control of the purchaser, or upon sale of all or a substantial portion of the MATRIXx assets; and

(d) Permit use of the IP in third-party products or services designed and intended for use with the purchaser's product, e.g., complementary software tools;

(5) Permit, without any restriction, grantback, or royalties, the ability to innovate based on the IP and to use such innovations in the purchaser's products or under any circumstances set forth above without restriction;

(6) Permit enforcement of infringement that damages the purchaser, except that The MathWorks may have a first right to enforce the patents, provided that if it does so the purchaser has appropriate intervention rights to protect its license or IP rights, and may have the right to join the purchaser as a party to any such infringement suit as may be necessary to protect fully the rights of The MathWorks; and

(7) Contain an appropriate covenant not to sue the purchaser with respect to the patents covered by the license.

(K) Wind River shall be entitled to Retained Rights as provided in the proposed Final Judgment by the United States and Wind River and filed June 21, 2002.

(L) The minimum price for the MATRIXx Assets shall be \$2 million cash, plus the cost and expenses of the Trustee. The defendants may, with the approval of the United States, waive this

minimum reserve price requirement. The MathWorks shall not finance the purchase or retain a contingent monetary or other interest in the MATRIXx assets being sold, other than ownership of certain patents to the extent described herein. All other costs (including the compensation of the Trustee in the event a sale of the MATRIXx assets is not consummated) will be borne by the defendants, allocated between themselves as they may agree.

(M) The United States shall have, in its sole discretion, the right to approve any prospective purchaser and the terms of any sales and license agreement negotiated with a prospective purchaser as follows:

(1) The United States shall have sole discretion to determine whether the MATRIXx assets could be competitively viable if owned by a prospective purchaser identified by the Trustee. If the United States determines that a prospective purchaser is competitively viable, the Trustee shall negotiate a definitive sales and license agreement with such purchaser. In the event of multiple bids, the United States, in its sole discretion, shall decide which prospective purchaser(s) the Trustee should pursue for purposes of negotiating a definitive sales and license agreement and shall so direct the Trustee. The MathWorks shall not challenge any such determinations by the United States.

(2) The United States and defendants shall have the right to request modifications, consistent with the terms of this Final Judgment, to any of the terms of any sales and license agreement with a prospective purchaser. The Trustee shall have discretion to approve or disapprove any such modifications, subject to the right of final approval of the definitive sales and license agreement by the United States. When considering any such request for modifications, the Trustee will take into account whether the terms and conditions in the proposed sales and license agreement are customary and reasonable for such sales and license of assets.

(3) Should the United States disapprove any purchaser or any term of the definitive sales and license agreement, the United States shall direct the Trustee to attempt to identify an alternative purchaser, or negotiate an acceptable agreement, consistent with this Final Judgment.

(N) The Trustee may seek to enforce the obligations of The MathWorks pursuant to this Final Judgment or the engagement agreement by filing a contempt motion with the Court.

(O) If the Trustee is unable to negotiate a definitive agreement within the period set forth in paragraph IV(G) at or above the price set forth in paragraph IV(L), the case shall be dismissed upon motion by any party.

V. United States' Access and Inspection

(A) For the purpose 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 privileged, duly authorized representatives of the United States Department of Justice, including consultant and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to The MathWorks be permitted:

(1) Access during The MathWorks' office hours to inspect and copy or, at the United States' option, to require The MathWorks to provide copies of all books, ledgers, accounts, records, and documents in its possession custody or control relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record at the United States' discretion, The MathWorks's directors, officers, employees, or agents, who may have their individual counsel present, relating to any matters contained in this Final Judgment. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by The MathWorks.

(B) Upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division. The MathWorks shall submit written reports, 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 The MathWorks to the United States, The MathWorks represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules

of Civil Procedure, and The MathWorks marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give ten (10 calendar days' notice prior to divulging such materials in any legal proceeding (other than a grand jury proceeding) to which the MathWorks is not a party.

VI. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish any violations of its provisions.

VII. Expiration of Final Judgment

This Final Judgment shall expire upon the earlier of (1) the date on which The MathWorks no longer has any right, title or interest in any of the MATRIXx assets except with regard to ownership of patent rights as specified herein, or (2) the date of dismissal of this action as a result of the failure of the Trustee to accomplish the sale of the MATRIXx assets pursuant to the terms of this order. If the MATRIXx assets are sold pursuant to the terms of this Final Judgment, The MathWorks shall not purchase, license or otherwise acquire substantially all of the MATRIXx assets before September 1, 2007, without the prior written consent of the United States.

VIII. Costs

Each party shall bear its own costs of this action.

IX. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Dated: _____

Court approval subject to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

Chief United States District Judge.

In the matter of: United States District Court for the Eastern District of Virginia, Alexandria Division; Civil Action No. 02-888-A, Chief Judge Hilton. United States of America, Plaintiff, v. The MathWorks, Inc. and Wind River Systems, Inc., Defendants.

Competitive Impact Statement

Pursuant to Section 5(b) of the Clayton Act, as amended by Section 2 of the Antitrust Procedures and Penalties Act (codified at 15 U.S.C. 16(b)-(h) ("Tunney Act")), the United

States files this Competitive Impact Statement relating to the proposed Final Judgments against Wind River Systems, Inc. and The MathWorks, Inc., submitted on June 21, 2002 and August 15, 2002, respectively, for entry in this antitrust proceeding.

I. Nature and Purpose of the Proceeding

On June 21, 2002, the United States filed a civil antitrust Complaint alleging that The MathWorks, Inc. ("The MathWorks") and Wind River Systems, Inc. ("Wind River"), head-to-head competitors in the sale of dynamic control system design software products, restrained competition in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

The complaint alleges that, on February 16, 2001, the MathWorks and Wind River entered into a number of agreements that eliminated competition between Wind River's MATRIXx products and The MathWorks' Simulink products. These agreements (hereinafter, collectively, the "MATRIXx Agreement") give The MathWorks the exclusive worldwide right to price and sell Wind River's MATRIXx for two years, transfer the customer support of MATRIXx to The MathWorks, require Wind River to stop developing and selling MATRIXx, and give The MathWorks an option to acquire MATRIXx in 2003. The MathWorks announced at the time it entered into the MATRIXx Agreement that there would be no further development of the MATRIXx products. As result of the MATRIXx Agreement, competition has been eliminated between The MathWorks and Wind River in the sale of dynamic control system design software. The Complaint seeks divestiture of the MATRIXx products to an independent and viable third party to restore the competition eliminated by the MATRIXx Agreement.

Defendants in this action have now agreed to cooperate fully to offer the MATRIXx products for sale. On June 21, 2002, the United States filed a proposed Final Judgment in this matter containing injunctive relief against Wind River, the nominal owner of the MATRIXx assets, that will require Wind River to fully cooperate with any court order requiring the divestiture of MATRIXx to a competitively viable third party. Because the MathWorks had previously acquired significant rights in the MATRIXx assets under the MATRIXx Agreement, Wind River's consent alone was insufficient to effectuate fully the relief sought by the United States in the Complaint. The lawsuit therefore continued against The MathWorks. On August 15, 2002, the United States and

The MathWorks filed a proposed Final Judgment that will lead to either the prompt and certain divestiture of the MATRIXx assets to a competitively viable third party or the dismissal of the Complaint in this action. By the proposed Final Judgment against The MathWorks, in combination with the proposed Final Judgment previously filed against Wind River, the United States has now received consent from all necessary parties sufficient to effectuate a judicially-supervised sale of the MATRIXx products. The proposed Final Judgments filed with the Court will terminate this action against the Defendants.

II. Actions Giving Rise to the Alleged Violations

A. Dynamic Control System Design Software

An integral part of the control system of many complex devices is the "controller"—the on-board computer and software programs that govern a device's operation. In aircraft, for example, the controller works by receiving pilot input plus input from various sensors (such as speed and altitude), processing the input, and providing outputs that optimize the aircraft's handling and operation through the use of various components (such as engines, flaps and the rudder).

Control system design tools were introduced approximately fifteen years ago and they provide significant benefits to control system design engineers. Before such tools were developed, engineers had to manually create equations that mathematically represented the behavior of the control system, write the appropriate software code to be installed in the on-board computers, and then build prototypes to test the system. Modern control system design tools have automated the analysis and modeling, as well as the code generation and simulation. With a mathematical engine at their core, and enhanced by graphical user interfaces, control system design tools are used by engineers to create "virtual" models of the control system. For very complex systems, the analytical process (model, analyze, design, test, produce) can only be accomplished efficiently with the help of computers and specialized software.

The initial modeling step is extremely important. The better the model is at simulating reality, the better and more robust the control system will be. Yet, a model is still an abstraction. So, after the analyzing and designing steps, the engineer still needs to test the controls in real or near-real situations. If the

controls fail the testing, then the initial steps of the analytical process are repeated with small design tweaks and the process repeats until the control pass final testing. The final product is computer code that can be embedded in a computer or on a chip.

MATRIXx and The MathWorks' Simulink are dynamic control system design toolsets providing functionality that addresses each of the engineer's tasks and aids in rapid control systems development. For example, both toolsets have:

- (1) Graphical interfaces and high level scripting languages for modeling and simulation, and mathematical engines with advanced control design modules, or libraries, for design and analysis;
- (2) Automatic efficient code generation suitable for testing and production; and
- (3) Tools for real-time simulation and testing.

The tools in the Simulink toolset, numbered by functionality, are called: (1) Simulink and MATLAB; (2) Real Time Workshop; and (3) xPC. The tools in the MATRIXx toolset are called: (1) Systembuild and xMath; (2) Autocode; and (3) RealSim.

MATRIXx and Simulink are considered "suites" or "toolsets" of control design software. Suite products from a single vendor offer not only full functionality, but also seamless integration between tools used throughout the analytical process. As a result, no time is lost by a need to convert designs or data from one tool to another. Utilizing a suite or toolset of control design software facilitates the ability to make changes anywhere in the modeling and design process. Seamless integration is one of the keys to the rapid development of complex control systems.

MATRIXx and Simulink were developed from common source code in the early 1980s. Because of their common origin, the products are similar. However, the products have been independently developed by different companies for more than fifteen years. The competing development efforts represent one critical way that the Defendants compete. For the last ten to fifteen years, MATRIXx and Simulink have competed head-to-head for sales, not only by competing on price, but also by adding features to lure customers away from one another.

B. Illegal Agreement To Allocate Markets, Fix Prices, and Unreasonably Reduce Competition

In April 2000, Wind River acquired Integrated Systems, Inc. ("ISI"). At the

time, ISI was a well regarded vendor of software, tools, and engineering services for the embedded systems market. Its embedded real-time operating system, deployed in more than 38 million devices worldwide as of 2000, addressed the telecom/datacom, consumer electronics, automotive, aerospace, and emerging Internet appliance marketplaces. Among its software portfolio it also produced the MATRIXx family of software products. Although ISI had spent considerable resources developing MATRIXx since the mid-1980s, its primary business continued to revolve around the embedded systems market.

Wind River, itself a significant vendor of software for embedded systems, pursued the acquisition of ISI, in large part, to obtain a skilled pool of embedded system software developers that it hoped would shorten the time to market for critical new embedded system products. Wind River soon came to view MATRIXx as a struggling product line within ISI with small revenue and no growth potential. More importantly, the MATRIXx market was neither within Wind River's core competency nor central strategic focus for the future. Thus, Wind River decided not to devote any of its resources to the continued development and sale of MATRIXx.

Shortly after Wind River's acquisition of ISI, The MathWorks approached Wind River and began vigorously negotiating to acquire the MATRIXx assets. On February 16, 2001, The MathWorks and Wind River entered into the MATRIXx Agreement under which Wind River granted The MathWorks exclusive distribution and license rights to the MATRIXx toolset and the MATRIXx intellectual property (including the right to incorporate MATRIXx source code into The MathWorks products) during a thirty-month license period beginning on February 16, 2001. Following the expiration of the thirty-month license period, The MathWorks would have the option to acquire MATRIXx.

Under the MATRIXx Agreement, The MathWorks is required to provide two years of customer support (ending in February 2003) for existing MATRIXx users.¹ While Wind River agreed to continue fulfilling its existing customer support obligations, as well as provide "critical" bug fixes during the license period, the MATRIXx Agreement provides that Wind River will not

produce new versions of MATRIXx with feature enhancements. The MathWorks and Wind River also agreed on the pricing of Simulink when purchased by MATRIXx customers. The companies agreed that The MathWorks would give customers with current MATRIXx licenses, who switched to The MathWorks suite of products, a discount amounting to 50% off the list price of The MathWorks products for those who switched in the first year of the MATRIXx Agreement and 25% off for those who switched in the second year of the MATRIXx Agreement.

The MathWorks agreed to make payments to Wind River totaling \$11,500,000 over a three-year period. These payments are to be made on a set schedule and are not contingent on the volume of MATRIXx products MathWorks sells. Further, Wind River granted The MathWorks an option to purchase MATRIXx and certain MATRIXx intellectual property (e.g., the source code, customer lists, trademarks and copyrights) twenty months after closing for an additional sum of \$2,000,000. Wind River has retained exclusive ownership of the optioned assets during the interim and until The MathWorks exercises its right to acquire them. Finally, the MATRIXx Agreement assigned certain patent rights to The MathWorks for \$500,000.

C. Effect of the Illegal Agreement

The MATRIXx Agreement eliminated competition between The MathWorks and Wind River in the simulation software, automatic code generation, and testing software markets. The MathWorks now has complete control over the development and pricing of the products of its closest competitor in these dynamic control systems design software markets, thus depriving customers of the benefits of competition between Defendants' products, including competition based on price, service, and product innovation.

Further, many customers value tight integration of the products in each of the dynamic control system design software markets. Both The MathWorks and Wind River cooperated with a small number of companies to facilitate interfaces between the Defendants' products and those companies' products that compete with the Defendants' products in individual software markets. The competition between the MATRIXx toolset and the Simulink toolset provided Defendants an incentive to facilitate interoperation with third-party products, as an unwillingness by one to do so would likely advantage the other. As a consequence of the elimination of

competition resulting from the MATRIXx Agreement, The MathWorks will have less incentive to provide such technical cooperation to competitors selling individual products, thus further reducing competition for consumers who value integrated products.

The MATRIXx Agreement allocates MATRIXx customers between Wind River and The MathWorks, fixes price terms for those customers ceded to The MathWorks who subsequently switch to Simulink, and permits The MathWorks to control the future of, and enables the elimination of, the MATRIXx products. As the MATRIXx products are the principal competitive products to The MathWorks' own dynamic control system design software, the overall effect of the MATRIXx Agreement is to eliminate competition between Defendants in the three separate dynamic control system design software markets: (1) Simulation software market, where products in the MATRIXx and Simulink suite are used by engineers to design, analyze, and simulate dynamic control system behavior; (2) automatic code generation software market, where products in both suites are used to automatically generate code from models developed with simulation software; and (3) testing software market, where products in both suites are used by engineers to test their models and then automatically generate code by simulating the function of the control system in a real time environment. Consumers are harmed both by the elimination of the MATRIXx products as a competitive alternative, as well as the resulting reduction of competitive pressure on The MathWorks to lower prices, improve service, continue product innovation and development of its own dynamic control system design software products, and cooperate with companies selling individual products.

III. Explanation of the Proposed Final Judgments

During the course of an investigation, customers complained to the Antitrust Division that the MATRIXx Agreement had eliminated Wind River's MATRIXx—the only significant products that competed directly with The MathWorks' Simulink products—as a competitive alternative in the market. Because customers indicated that, due to the present lack of development of MATRIXx and its uncertain future, they would soon have to begin a costly migration to The MathWorks' Simulink products, the United States ultimately concluded that a quick and effective remedy was necessary to reestablish MATRIXx as a viable alternative. The

¹ Wind River retained rights to the MATRIXx intellectual property during the license period in order to provide support service to two International Space Station customers.

United States further concluded, however, that simply rescinding the MATRIXx Agreement would not restore the competition it had eliminated in light of Wind River's genuine desire to exit the markets for the MATRIXx family of software products. At the same time, the principal defense offered by Defendants for their conduct was a contention that no competitive buyer would be interested in purchasing the MATRIXx assets. Taking into account customer concerns and the The MathWorks' arguments, the United States pursued an enforcement approach that would both test Defendants' assertions as to MATRIXx market value and maximize the possibility of restoring effective competition in a timely manner.

The United States and Defendants entered into an April 26, 2002, letter agreement that required an attempted sale of the MATRIXx product line in an effort to restore the competition eliminated by the MATRIXx Agreement. Under the April 26 letter agreement, Defendants were given the opportunity to test their assertion that no other viable purchaser existed by agreeing to "shop" the MATRIXx assets through an independent agent. The United States believed that one or more viable purchasers existed and that an independent agent would succeed in finding a buyer. The United States acknowledged, however, that, if no alternative viable purchaser emerged from the "shop," remedying the competitive harm caused by the MATRIXx Agreement would be difficult. The United States thus agreed that, should the "shop" fail following a good faith effort, and given Wind River's decision to discontinue the sale and development of the MATRIXx products, it would close its investigation without taking any enforcement action. However, the Defendants did not comply with the terms of the April 26 letter agreement and the United States, on June 21, 2002, filed its Complaint seeking a judicially-enforced sale of the MATRIXx assets.

Contemporaneously with the filing of the Complaint, the United States and Wind River filed a proposed Final Judgment that would settle the case against Wind River on the condition that it fully cooperate with any court order requiring the divestiture of the MATRIXx assets. As noted above, because both Wind River and The MathWorks retain rights in the MATRIXx products, Wind River's consent alone was insufficient to effectuate fully the relief sought by the United States in the Complaint. The lawsuit, therefore, continued against

The MathWorks. On August 15, 2002, the United States and The MathWorks filed a proposed Final Judgment that would resolve the case against The MathWorks. The proposed Final Judgment between the United States and The MathWorks contains injunctive relief that is intended to promptly offer the MATRIXx assets for sale to a competitively viable third party approved by the United States. It further establishes a structure and time line for the sale that will be supervised by the court. Thus, the proposed Final Judgments against Wind River and The MathWorks will lead to either the prompt and certain divestiture of the MATRIXx assets or the dismissal of the Complaint in this action.

A. Proposed Final Judgment Against Wind River

On June 21, 2002, the United States filed a Stipulation and Order and a proposed Final Judgment that resolved the allegations in the Complaint against Wind River. Pursuant to the proposed Final Judgment, Wind River agreed to facilitate the United States' efforts to divest the MATRIXx assets. Wind River's agreement to assist the United States in a divestiture of the MATRIXx assets, however, was expressly conditioned on the Court entering a Final Judgment against The MathWorks ordering the divestiture of the MATRIXx assets.

1. Wind River Covenants

Section IV of the proposed Final Judgment against Wind River sets forth the substantive injunctive provisions and is designed to assist the United States in its efforts to promote continued competition in the markets for dynamic control system design software. Thus, Section IV(C) of the proposed Final Judgment states that the United States is seeking a judgment that would require, among other things, the prompt and certain divestiture of all MATRIXx assets to a buyer acceptable to the United States and the appointment of a trustee to effect the divestiture. Wind River is expressly prohibited from contesting the entry of such a judgment. In addition, Section IV(C) requires Wind River to use its reasonable best efforts to assist in effectuating such an order by divesting all of its rights, title, and interests in the MATRIXx assets. Section IV(D) further requires Wind River to take steps to ensure the prompt and certain divestiture of any rights in the MATRIXx assets currently held by The MathWorks that revert to Wind River. Wind River shall retain certain rights to use and distribute the MATRIXx

products and intellectual property related to specific contracts it retained in the MATRIXx Agreement and any Wind River products available for purchase as of February 16, 2001 (except for the MATRIXx products). These Retained Rights, as outlined in the proposed Final Judgments, are all current rights held by Wind River.

2. Termination of Action, Compliance, and Expiration of Final Judgment

Insofar as Wind River's consent alone was insufficient to achieve a full divestiture of the MATRIXx assets, and because the United States had neither an order from the Court requiring The MathWorks to divest the MATRIXx assets nor had reached an agreement with The MathWorks on a proposed Final Judgment requiring the divestiture of the MATRIXx assets, Wind River remained a party to this action under Section IV(A) for the sole purpose of effectuating any relief ordered by the Court or agreed to by the United States and The MathWorks. Wind River also agreed to permit the United States to monitor its compliance with the Final Judgment under Section V of the proposed Final Judgment under substantially the same terms as agreed to by The MathWorks and discussed in subsection III(B)(2) below.

Under Section VII of the proposed Final Judgment against Wind River, the Final Judgment does not have a fixed term or date of expiration. Because Wind River's obligations were dependent upon the United States gaining a Final Judgment against The MathWorks requiring divestiture of the MATRIXx assets, the Final Judgment against Wind River was made contingent upon a Final Judgment against The MathWorks and will expire upon the earlier of: (1) Wind River's completion of all obligations imposed upon it pursuant to Section IV of this Final Judgment in light of the proposed Final Judgment against The MathWorks; or (2) the date on which Wind River no longer has any right, title, or interest in any of the MATRIXx assets (except for the Retained Rights).

B. Proposed Final Judgment Against the MathWorks

Subsequent to the proposed Final Judgment filed in this case against Wind River, the United States reached agreement with The MathWorks on a proposed final judgment that will facilitate the offer for sale of the MATRIXx assets to a competitively viable third party. Defendants' compliance with the terms of the proposed Final Judgments, filed on June

21, 2002 and August 15, 2002, will terminate this action.

1. Divestiture Provisions

Section IV of the proposed Final Judgment agreed to by The MathWorks contains substantive provisions setting forth the terms on which the MATRIXx assets will be offered for sale. It is designed to lead expeditiously to the identification of competitively viable third parties who are interested in acquiring the MATRIXx assets, negotiation of a definitive sales and licensing agreement, and restoration of competition in the markets for dynamic control system design software. Thus, Sections IV(A)–(C) provide that the United States will, as soon as possible, but in no event later than 30 days from the date the proposed Final Judgment was filed with the Court, select an independent agent to serve as Trustee for the purpose of accomplishing the sale of the MATRIXx assets to a purchaser approved by the United States. The United States will have the sole discretion, subject to approval by the Court, to negotiate the terms and conditions on which the Trustee shall serve and the Trustee shall serve at the cost and expense of the Defendants.

Sections IV(D) and (E) direct the Trustee to attempt to sell the MATRIXx assets and negotiate a definitive sales and licensing agreement with a prospective purchaser. To this end, the Trustee is required to promptly make it known that the MATRIXx assets are available for purchase. In order to assist the Trustee in preparing offering materials and to provide prospective purchasers with customary due diligence information with respect to the MATRIXx assets, the Defendants must provide the Trustee with all requested information and documents within three business days. Section IV(D) expressly provides that Defendants shall have no authority or responsibility with respect to the sale of the MATRIXx assets, except promptly to provide any information relating to the MATRIXx assets requested by the Trustee.

Sections IV(F)–(H) provide that the Trustee shall have 90 days from the date on which it certifies to the Court that the Defendants have provided adequate information to offer the MATRIXx assets for sale and to consummate a definitive sales and licensing agreement with a purchaser approved by the United States. During this 90-day period, the Trustee may request additional information and documents from the Defendants who shall comply with any such request within three business days. If a divestiture of the MATRIXx assets

is to occur under the proposed Final Judgment, it must be consummated within the 90-day period prescribed by Section IV(G), as the 90-day period may only be extended for undue delays found by the Court to be caused by Defendants. A definitive sales and licensing agreement, negotiated by the Trustee, shall be on customary and commercially reasonable terms and substantially equivalent, except for the payment terms, to the terms and conditions in the MATRIXx Agreement, to the extent possible. For example, the definitive sales and licensing agreement should include representations, warranties, covenants, and transitional support to the purchaser equivalent to those in the MATRIXx Agreement.

Pursuant to Section IV(M), the United States shall have the sole discretion to approve both prospective purchasers and the terms of any sales and licensing agreement negotiated with an approved prospective purchaser. If the United States determines that a prospective purchaser is competitively viable, it will direct the Trustee to negotiate a definitive sales and licensing agreement with that prospective purchaser. In the event of multiple prospective purchasers, the United States, in its sole discretion, will direct the Trustee as to with which prospective purchaser(s) the Trustee should negotiate. The MathWorks is expressly prohibited from challenging any decisions made by the United States regarding the selection of prospective purchasers or approval of specific terms. While each Defendant has the right to request modifications to the terms of any sales and licensing agreement with a prospective purchaser, the Trustee is permitted to approve or deny such modifications. The United States, however, retains the right of final approval over all terms and conditions of the definitive sales and licensing agreement. Should the United States reject any purchaser or any term of the definitive sales and licensing agreement, the United States will direct the Trustee to attempt to identify an alternative purchaser, or negotiate an acceptable agreement, consistent with the proposed Final Judgment.

Section IV(J) expressly provides that The MathWorks may retain ownership of three patents subject to the MATRIXx Agreement, so long as the purchaser is offered a comprehensive license to the patents that permits unimpeded use. Any patent license issued under the Final Judgment:

- Must be perpetual, fully paid-up, and without continuing royalties to either Defendant;
- Must not limit the purchaser's ability to use the patents in any of

purchaser's current or future products or service;

- Must permit the purchaser to sublicense the intellectual property contained in the patents so as to:
 - Convey rights necessary to exploit the technology to end user customers of any product or service that includes the intellectual property;
 - Enter into joint development, joint marketing, and other joint ventures with third parties in which the purchaser and the third party retain an interest in the resulting product, service, research or intellectual property;
 - Permit transfer of the license either upon change of control of the purchaser, or upon sale of all or a substantial portion of the MATRIXx assets; and
 - Permit the use of the intellectual property in products or services designed and intended for use with purchaser's products or as a complement to purchaser's products;
 - Must permit the purchaser the ability to innovate based on the intellectual property and to use such innovations in the purchaser's products or under any circumstance set forth above without restriction, grantback, or royalty;
 - Must permit the purchaser to enforce infringement claims that damage the purchaser in circumstances where The MathWorks fails to enforce intellectual property rights under the patents; and
 - Must contain an appropriate covenant not to sue the purchaser with respect to the patents covered by the license.

Under Section IV(I), the Trustee is required to file written reports with the Court, the United States, and the Defendants after thirty days, and each 15 days thereafter, describing the Trustee's activities to date. Section IV(K) provides that Wind River is entitled to retain certain rights to defined in Section II of the proposed Final Judgment. Section IV(L) establishes a minimum price of \$2,000,000, plus the cost and expenses of the Trustee, for which the MATRIXx assets may be sold unless the Defendants, with the approval of the United States, waive this minimum reserve price requirement. Section IV(N) expressly gives the Trustee the ability to enforce the obligations of the MathWorks under the proposed Final Judgment or the Trustee's engagement letter by way of filing a contempt motion with the Court. Finally, Section IV(O) provides that if the Trustee is unable to negotiate a definitive sales and licensing agreement with the period set forth in Section IV(G), the United

States' Complaint in this action may be dismissed upon motion by any party.

2. Compliance

Section V of the proposed Final Judgment requires The MathWorks to provide documents and information within its control necessary for the purposes of determining and securing compliance with the Final Judgment. Upon written request and on reasonable notice, The MathWorks shall provide the United States with access to all records and documents in its possession or control, make available its employees, and submit written reports related to matters contained in the Final Judgment.

3. Jurisdiction, Termination, and Acquisition of MATRIXx

Pursuant to Section VI of the proposed Final Judgment, the Court retains jurisdiction over this matter in order to enable any party to the Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out the Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish any violations of its provisions.

Because the outcome of the sale is uncertain, the Final Judgment does not have a fixed term or date of expiration. The Final Judgment sets out a procedure and time line under which a trustee will offer the MATRIXx assets for sale, but recognizes that such sale may not be accomplished, in which case the lawsuit will be dismissed. Because divestiture of the MATRIXx assets is dependent upon the Trustee's success in identifying a suitable prospective purchaser and negotiating a definitive sales and licensing agreement acceptable to the United States within a prescribed period of time, Section VII provides that the Final Judgment shall expire upon the earlier of: (1) the date on which The MathWorks no longer has any right, title or interest in any of the MATRIXx assets except with regard to the ownership of patent rights specified in Section IV(J); or (2) the date of dismissal of this action as a result of the failure of the Trustee to accomplish the sale of the MATRIXx assets pursuant to the terms of the Final Judgment.

Finally, Section VII further expressly provides that if the MATRIXx assets are sold pursuant to the terms of the Final Judgment, The MathWorks is prohibiting from purchasing, licensing, or otherwise acquiring all or substantially all of the MATRIXx assets before September 1, 2007, without the prior written consent of the United States.

IV. Alternatives to the Proposed Final Judgments

The United States considered, as an alternative to the proposed Final Judgments, a full trial on the merits against the Defendants. The United States is satisfied, however, that a trial would not result in injunctive relief against Defendants beyond what is contained in the proposed Final Judgments against Wind River and The MathWorks, filed on June 21, 2002, and August 15, 2002, respectively. Moreover, the proposed injunctive relief is designed to more quickly achieve the primary objective of the litigation—preserving MATRIXx as a viable competitive alternative in the relevant markets for dynamic control system design software to the extent it is possible to do so.

V. Remedies Available to 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 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 effect as *prima facie* evidence in any subsequent private lawsuit that may be brought against defendants.

VI. Procedures Available for Modification of the Proposed Final Judgments

The parties have stipulated that the proposed Final Judgments may be entered by this Court after compliance with the provisions of the Tunney Act, provided that the United States has not withdrawn its consent. The Tunney Act conditions entry of the decree upon this Court's determination that the proposed Final Judgments are in the public interest.

As provided by Sections 5(b) and (d) of the Clayton Act, 15 U.S.C. 16(b) and (d), any person may submit to the Department written comments regarding the proposed Final Judgments. Any person who wishes to comment must do so within sixty days of publication of this Competitive Impact Statement and the proposed Final Judgments in the **Federal Register**.

The Department will evaluate and respond to the comments. All comments will be given due consideration by the

Department, which remains free to withdraw its consent to the proposed Final Judgments at any time prior to entry. The comments and the responses of the Department will be filled with the Court and published in the **Federal Register**.

Written comments should be submitted to: Renata B. Hesse, Chief, Networks and Technology Section, United States Department of Justice, Antitrust Division, 600 E Street, NW., Suite 9500, Washington, DC 20530.

The proposed Final Judgments provide that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for modification, interpretation, or enforcement of the Final Judgments.

VII. Standard of Review Under the Tunney Act, for the Proposed Final Judgments

The Tunney Act requires that injunctions of anticompetitive conduct contained in proposed consent judgments in antitrust cases brought by the United States be subject to a 60 day comment period, after which the court shall determine whether entry of the proposed Final Judgments are "in the public interest." In making that determination, the court *may* consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment.

(2) The impact of entry of such judgment 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) (emphasis added). As the Court of Appeals for the District of Columbia has held, the Tunney Act permits a court to consider, 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).

In conducting this inquiry, "the 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.”² Rather,

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 explanation 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.³

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not “engage in an unrestricted evaluation of what relief would best serve the public.” *United States v. BNS, Inc.*, 858 F.2d 456, 462–63 (9th Cir. 1988), quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.) cert. denied, 454 U.S. 1083 (1981); see also *Microsoft*, 56 F.3d at 1458. Precedent requires that

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be let, 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.⁴

The proposed Final Judgments, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final

judgment requires a standards 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.’”⁵

Moreover, the Court’s role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States alleges 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. Since 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 might have but did not pursue. *Id.*

VIII. Determinative Material/ Documents

No materials and documents of the type described in the Section 5(b) of the Clayton Act, 15 U.S.C. 16(b), were considered in formulating the proposed Final Judgments. Consequently, none are being filed with this Competitive Impact Statement.

Dated: September 19, 2002.

Respectfully submitted,

James J. Tierney,
Patricia A. Brink,
Kenneth W. Gaul,
Jeremy West,
J. Robert O. Hizon,
David E. Blake-Thomas,
Patrick O’Shaughnessy,
Trial Attorneys.

Paul J. McNulty,
United States Attorney, U.S. Department of Justice, Antitrust Division, Networks & Technology Section, 600 E. Street, NW., Suite 9500, Washington, DC 20530. Tel: 202/307-6200. Fax: 202/616-8544.

Richard Parker,
Assistant United States Attorney, VSB No. 44751, 2100 Jamieson Avenue, Alexandria, VA 22314. Tel: 703/299-3700.

Certificate of Service

I certify that on September 19, 2002, a true and correct copy of the United States’ Competitive Impact Statement, related to the proposed Final Judgments

in this matter against Defendants and agreed to by Defendants pursuant to the Stipulations And Orders filed with the Court, was served on the following counsel:

Counsel for Wind River Systems, Inc.:
Richard L. Rosen, Arnold & Porter, 555 Twelfth Street, NW., Washington, DC 20004–1206. Fax: 202/942–5999.

By: hand delivery.

Counsel for The MathWorks, Inc.:
Thane D. Scott, Palmer & Dodge, LLP, 111 Huntington Avenue, Boston, Massachusetts 02199–7163. Fax: 617/227–4420.

By: fax and Federal Express.

J. Mark Gidley, White & Case, LLP, 601 Thirteenth Street, NW., Washington, DC 20005–3807. Fax: 202/639–9355.

By: hand delivery.

David E. Blake-Thomas.

[FR Doc. 02–26631 Filed 10–18–02; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration, Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 11, 2002, and published in the **Federal Register** on April 26, 2002, (67 FR 20827), Irix Pharmaceuticals, Inc., 101 Technology Place, Florence, South Carolina 29501, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture methylphenidate for sale to their customers.

No comments or objections have been received. DEA has considered the factors in Title 21, U.S.C., Section 823(a) and determined that the registration of Irix Pharmaceuticals, Inc. to manufacture methylphenidate is consistent with the public interest at this time. DEA has investigated the firm on a regular basis to ensure that the company’s continued registration is consistent with the public interest. These investigations have included inspection and testing of the company’s physical security systems, audits of the company’s records, 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 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above

² 119 Congressional Record 24,598 (1973). See *United States v. Gillette Co.*, 406 F. Supp. 173, 715 (D. Mass. 1975). A “public interest” determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the Tunney Act. Although the Tunney Act authorizes the use of additional procedures, those procedures are discretionary (15 U.S.C. 16(f)). A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. No. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), 1974 U.S.C.C.A.N. 6535, 6538.

³ *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. Loew’s Inc.*, 783 F. Supp. 211, 214 (S.D.N.Y. 1992); *United States v. Columbia Artists Mgmt, Inc.*, 662 F. Supp. 865, 870 (S.D.N.Y. 1987).

⁴ *United States v. Bechtel Corp.*, 648 F.2d at 666 (citations omitted) (emphasis added); see *United States v. BNS, Inc.*, 858 F.2d at 463; *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States v. Gillette Co.*, 406 F. Supp. at 716. See also *United States v. American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), cert denied, 465 U.S. 1101 (1984).

⁵ *United States v. American Tel. & Tel. Co.*, 552 F. Supp. 131, 151, (D.D.C. 1982) (quoting *Gillette*, 406 F. Supp. at 716), *aff’d sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985); *United States v. Carrolls Dev. Corp.*, 454 F. Supp. 1215, 1222, (N.D.N.Y. 1978).