UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-v.-

KKR & CO. INC., et al.,

Defendants.

1:25-cv-343-LTS

[rel. 1:25-cv-448-LTS]

COMPETITIVE IMPACT STATEMENT

In accordance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) (the "APPA" or "Tunney Act"), the United States of America files this Competitive Impact Statement related to the proposed Final Judgment filed in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

On January 14, 2025, the United States filed a civil antitrust Complaint against KKR & Co. Inc.; KKR & Co. GP LLC;[1] Kohlberg Kravis Roberts & Co. L.P., and twelve affiliated funds (collectively "KKR"), for violating the premerger notification and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a (the "HSR Act").

The HSR Act and the accompanying regulations (the "HSR Rules") require parties to provide advance notice to the federal antitrust agencies—the Department of Justice ("DOJ"), Antitrust Division and the Federal Trade Commission ("FTC")—of their proposed transaction if

[1] The Stipulation and Order was signed by KKR & Co. GP LLC. However, the proposed Final Judgment extends to all of KKR & Co. GP LLC's "direct and indirect parents, subsidiaries, divisions, groups, partnerships, and joint ventures, and its and their respective directors, officers, managers, agents, partners, advisors, and employees, and any investment fund, account or vehicle that is managed, advised, or sponsored by any direct or indirect corporate affiliate of KKR & Co. GP LLC." PFJ § II.A.

it meets certain criteria. After making their HSR filings, parties must observe a statutory waiting period before closing the transaction. Providing advance notice to the agencies, which includes submitting required information about the parties and the transaction and adhering to the waiting period, is necessary to prevent parties from prematurely consolidating their assets before the agencies have had a meaningful opportunity to investigate whether the transaction violates the antitrust laws.

The Complaint alleges that, despite KKR's decades of experience with the premerger notification process as one of the world's largest private equity firms, KKR violated the HSR Act in connection with its premerger notification filings for, at minimum, 16 separate transactions (collectively, the "Transactions") since at least 2021. These violations encompass a range of misconduct: KKR omitted required documents from its HSR filings, KKR altered documents in its HSR filings prior to submission, and KKR failed to make timely HSR filings for qualifying transactions. In addition, KKR's internal process for preparing and reviewing HSR filings was deficient and lacked adequate supervision, training, and control procedures reasonably necessary to ensure HSR Act compliance by its employees.

On April 17, 2025, KKR filed a motion to dismiss the Complaint, which the United States opposed. The Court has not ruled on the pending motion.

The United States has now filed a proposed Final Judgment and Stipulation and Order ("Stipulation and Order") to which KKR has agreed and that is designed to remedy the violations of the HSR Act alleged in the Complaint. Under the proposed Final Judgment, which is explained more fully below, KKR is required to pay a civil penalty of $250,000,000.

The United States and KKR have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATIONS

A. Background

KKR is a major global investment firm that provides asset management and insurance solutions and has over $744 billion in total assets under management. KKR's asset management business includes a private equity segment operated by Kohlberg Kravis Roberts & Co. L.P. and other subsidiaries of KKR. KKR describes itself as "a leader of the private equity industry for five decades" reporting over $229 billion of private equity assets under management as of December 31, 2025.[2]

As part of its asset management business, KKR routinely engages in transactions that require notice under the HSR Act. For the period 2021-2024, KKR provided notice to the Antitrust Division and the FTC of over 100 proposed transactions under the HSR Act. During that time, as the Complaint alleges, KKR repeatedly violated the HSR Act by failing to provide true, correct, and complete information to the federal antitrust agencies in premerger notification filings for, at a minimum, the 16 Transactions. For each of the Transactions, KKR filed premerger notification forms pursuant to the HSR Act on behalf of the relevant portfolio company/investment fund.

B. Violations of the HSR Act

As alleged in the Complaint, KKR, the Transactions, and the other parties thereto all met the criteria that required premerger notification pursuant to the HSR Act and the HSR Rules. Because of this, KKR and the other parties to the Transactions were required to submit

[2] KKR & Co. Inc. 2025 Form 10-K at 8.

premerger notifications, certified by an officer, with all required information, and to observe the statutory waiting period before they could consummate the Transactions.

The Complaint asserts that KKR violated the premerger notification and waiting period requirements of the HSR Act by submitting a deficient HSR filing for each Transaction, for a total of at least 16 HSR Act violations, as follows:

- With respect to ten of the Transactions, KKR omitted responsive HSR documents from its filings. The number of documents per transaction omitted by KKR ranged from one to 29 and included information related to head-to-head competition, product overlaps, post-merger strategic plans, pricing, and deal valuation—all topics covered by the HSR Act's document production requirements.
- With respect to eight of the Transactions, KKR altered documents prior to submitting them as part of HSR filings, including four transactions for which KKR both omitted *and* altered HSR documents prior to submission. Five of the eight affected HSR filings included one altered document each, two included two altered documents each, and one included four altered documents. These alterations included the deletion of information related to KKR's investment theses, post-merger strategic plans, competitive overlaps, and future acquisition plans.
- With respect to two of the Transactions, KKR failed to make timely HSR filings. In December 2021, KKR admitted to the FTC that it did not make proper HSR filings before closing two acquisitions. KKR described the failures to file as inadvertent and arising from an unusual and unanticipated set of circumstances

related to the timing of a complicated restructuring transaction, and KKR made corrective filings for both transactions.

The examples of recurrent document omissions, document alterations, and failures to file proper HSR Forms are indicative of systemic noncompliance with the HSR Act by KKR. As a major investment firm with billions of dollars of assets under management, and with decades of experience with the HSR Act, KKR knew that compliance with the HSR Act required notification for its qualifying transactions and submission of all responsive documents—in full and without alterations—to the antitrust agencies. KKR's systemic lack of compliance with the HSR Act's notification requirements impeded the ability of the antitrust agencies to fully evaluate the competitive effects of the Transactions prior to consummation.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The civil penalty KKR must pay pursuant to the proposed Final Judgment is intended to remedy the HSR Act violations alleged in the Complaint. Section IV of the proposed Final Judgment imposes a civil penalty of $250,000,000 to address the violations alleged in the Complaint, penalize KKR, and deter KKR and others from violating the HSR Act. The United States adjusted the penalty downward from the maximum amount permitted under the HSR Act because KKR is willing to resolve the matter through the proposed Final Judgment, permitting the United States to thereby avoid prolonged litigation, and because KKR has already implemented a new, more robust HSR Act compliance program designed to mitigate the risk of future violations. The release contained in Section IV of the Stipulation and Order and the reservation of rights in Section XI of the proposed Final Judgment releases the claims stated in the Complaint against KKR, *i.e.*, claims that KKR violated Section 7A of the Clayton Act based upon HSR filings that were made, or were required to have been made, prior to the date of the filing of the Complaint, January 14, 2025. It does not affect other charges or claims the United

States may file. The United States retains the ability to investigate KKR's compliance with the HSR Act for more recent and future transactions, such as through the use of civil investigative demands, which it used to uncover the HSR Act violations alleged in the Complaint.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

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 neither impairs nor assists 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 one or more Defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and KKR 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 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 60 days of the date of publication of this Competitive Impact Statement in the Federal Register, or within 60 days of the first 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 U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, the comments and the United States' responses will be published in the Federal Register unless the Court agrees that the United States instead may publish them on the U.S. Department of Justice, Antitrust Division's internet website.

Written comments should be submitted in English to:

Danielle Hauck
Acting Chief, Technology and Digital Platforms Section
Antitrust Division
United States Department of Justice
450 Fifth St. NW, Suite 7100
Washington, DC 20530
atr.public-comments-tunney-act-mb@usdoj.gov

The proposed Final Judgment provides that the Court retains jurisdiction over this action and that 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

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against the Defendants. The United States is satisfied, however, that the proposed relief is an appropriate remedy in this matter, especially given the particular circumstances presented in this case including the passage of time and the remedial measures already undertaken by KKR. Thus, the proposed Final Judgment achieves 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 and potential appeals.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

Under the APPA, proposed Final Judgments, or "consent decrees," in antitrust cases brought by the United States are subject to a 60-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); *see also United States v. Int'l Bus. Mach. Corp.*, 163 F.3d 737, 739-40 (2d Cir. 1998) (describing the Tunney Act process and public interest standard). In making that determination, the Court, in accordance with the statute as amended in 2004, 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
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> (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); *see generally United States v. Keyspan*, 763 F. Supp. 2d 633, 637–38 (S.D.N.Y. 2011) (discussing Tunney Act standards). 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); *United States v. Hewlett Packard Enterprise Co.*, No. 25-CV-00951-PCP, 2026 WL 2349970, at *16 (N.D. Cal. Aug. 12, 2026); *accord United States v. Alex. Brown & Sons, Inc.*, 963 F. Supp. 235, 238 (S.D.N.Y. 1997), *aff'd sub nom. United States v. Bleznak*, 153 F.3d 16 (2d Cir. 1998) (citing *Microsoft*, 56 F.3d at 1460); *Keyspan*, 763 F. Supp. 2d at 637 (same).

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's Complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it 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, "'[t]he Court's function is not to determine whether the proposed [d]ecree results in the balance of rights and liabilities that is the one that will *best* serve society, but only to ensure that the resulting settlement is 'within the *reaches* of the public interest.'" *United States v. Morgan Stanley*, 881 F. Supp. 2d 563, 567 (S.D.N.Y. 2012) (quoting *Alex. Brown & Sons*, 963 F. Supp. at 238) (internal quotation marks omitted). In making this determination, "'[t]he [c]ourt is not permitted to reject the proposed remedies merely because the [c]ourt believes other remedies are preferable. [Rather], the relevant inquiry is whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlement are reasonable.'" *Morgan Stanley*, 881 F. Supp. 2d at 567 (citing *United States v. Abitibi-Consolidated Inc.*, 584 F. Supp. 2d 162, 165 (D.D.C. 2008)); *see also United States v. Apple, Inc.*, 889 F. Supp. 2d 623, 631 (S.D.N.Y. 2012); *Alex. Brown & Sons*, 963 F. Supp. at 238.[3] The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *Apple*, 889 F. Supp. 2d at 631; *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. ArcherDaniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003)

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[3] *See also United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981) ("The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General."); *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'").

(noting that the court should grant due respect to the United States' 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. Iron Mountain, Inc.*, 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) ("In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.") (internal quotations omitted).

"Because enforcement by consent decree is an alternative to enforcement by trial or abandonment of the litigation altogether and often reflects the United States's assessment of litigation risk, a proposed settlement does not need to replicate the full relief that United States sought in its complaint." *Hewlett Packard Enter.*, 2026 WL 2349970, at *17. "[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); *Apple*, 889 F. Supp. 2d at 637 n.10; *see also United States v. U.S. Airways Grp., Inc.*, 38 F. Supp. 3d 69, 74 (D.D.C. 2014) (noting that room must be made for the government to grant concessions in the negotiation process for settlements) (citing *Microsoft*, 56 F.3d at 1461); *Morgan Stanley*, 881 F. Supp. 2d at 568 (approving the consent decree even though the court may have imposed a greater remedy). To meet this standard, "it is necessary only that the submissions provide an ample 'factual foundation for the government's decisions such that its conclusions regarding the proposed settlement are reasonable.'" *Apple*, 889 F. Supp. 2d at 639 (citing *Keyspan*, 763 F. Supp. 2d at 637–38).

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 Morgan Stanley*, 881 F. Supp. 2d at 567 ("A court must limit its review to the issues in the complaint and give 'due respect to the [Government's] perception of . . . its case.'") (citing *Microsoft*, 56 F.3d at 1461); *United States v. InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 (D.D.C. Aug. 11, 2009) ("[T]he '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.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using judgments proposed by the United States in antitrust enforcement, Pub. L. 108-237 § 221, and added the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2); *see also Apple*, 889 F. Supp. 2d at 633 (declining to hold evidentiary hearing and finding "[a] hearing would serve only to delay the proceedings unnecessarily."); *U.S. Airways*, 38 F. Supp. 3d at 76 (stating that "[a] court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act"). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Sen. John V. 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; *see also Apple*, 889 F. Supp. 2d at 632 ("[P]rosecutorial functions vested solely in the executive branch could be undermined by the improper use of the APPA as an antitrust oversight provision or anti-takeover statute." (quoting *United States v. BNS Inc.*, 858 F.2d 456, 466 (9th Cir. 1988)). A court can make its public interest determination based on the detailed allegations in the Complaint, competitive impact statement, and response to public comments alone. *Apple*, 889 F. Supp. 2d at 633; *U.S. Airways*, 38 F. Supp. 3d at 76.

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 27, 2026

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

STANLEY E. WOODWARD, JR.
Associate Attorney General

EMILY CLAIRE MIMNAUGH
Deputy Associate Attorney General

NICOLE A. SARRINE
Deputy Assistant Attorney General

SUZANNE MORRIS
Deputy Director for Civil Enforcement Operations

ANDREW L. KLINE
Acting Deputy Director of Civil Enforcement

DANIELLE HAUCK
Acting Chief, Technology & Digital Platforms Section

/s/ David M. Teslicko
DAVID M. TESLICKO
MEAGAN GLYNN
U.S. Department of Justice
Antitrust Division
450 5th St. NW, Suite 4000
Washington, DC 20530
Telephone: 202-710-0114
Email: David.Teslicko@usdoj.gov

Counsel for Plaintiff