

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ASSA ABLOY AB, *et al.*,

Defendants.

Civil Case No. 22-2791-ACR

**UNITED STATES' UNOPPOSED MOTION AND MEMORANDUM OF LAW
IN SUPPORT OF ENTRY OF FINAL JUDGMENT**

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (the “Tunney Act”), the United States of America (“United States”) moves the Court to enter the Proposed Final Judgment filed in this civil antitrust proceeding on May 5, 2023, ECF No. 128-4 (attached as Exhibit A).

The Proposed Final Judgment may be entered at this time without further proceedings if the Court determines that entry is in the public interest. 15 U.S.C. § 16(e). The Competitive Impact Statement (“CIS”) filed on May 5, 2023, ECF No. 129, and the Response of the United States of America to Public Comments on the Proposed Final Judgment (“Response to Public Comments”) filed on September 1, 2023, ECF No. 134, explain why the United States believes the Court will conclude entry of the Proposed Final Judgment is in the public interest. The United States is also filing a Certificate of Compliance (attached as Exhibit B) showing that the parties have complied with all applicable provisions of the Tunney Act and certifying that the 60-day statutory public comment period has expired.

I. BACKGROUND

On September 8, 2021, Defendant ASSA ABLOY AB (“ASSA ABLOY”) agreed to acquire the Hardware and Home Improvement division of Defendant Spectrum Brands Holdings, Inc. (“Spectrum”) for approximately \$4.3 billion. On September 15, 2022, the United States filed an antitrust lawsuit to stop the proposed acquisition from being consummated. The United States’ Complaint alleged that the proposed acquisition may substantially lessen competition in the markets for two types of residential door hardware (premium mechanical door hardware and smart locks) in the United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

On May 5, 2023, the United States filed the Proposed Final Judgment, an Asset Preservation Stipulation and Order (“Stipulation and Order”), and the CIS describing the events giving rise to the alleged violation and the Proposed Final Judgment. The Stipulation and Order, which was agreed to by the parties and which was entered by the Court on May 5, 2023, ECF No. 130, provides that the Proposed Final Judgment may be entered by the Court once the requirements of the Tunney Act have been met.

The Proposed Final Judgment requires ASSA ABLOY divest to non-party Fortune Brands Innovations, Inc. (“Fortune”), or to another entity approved by the United States in its sole discretion, assets that the Defendants previously used to compete against each other in the United States. In connection with those divestitures, the Proposed Final Judgment mandates a specific transition period for entanglements between ASSA ABLOY and Fortune. It also subjects ASSA ABLOY to significant financial penalties if ASSA ABLOY fails to transfer the divestiture assets by December 31, 2023. Additionally, the Proposed Final Judgment provides for the appointment of a monitoring trustee to oversee Defendants’ compliance with the terms of the Proposed Final Judgment. Importantly, the Proposed Final Judgment also provides that the

monitoring trustee can investigate whether the divestiture buyer will have replicated the competitive intensity in the residential smart locks market that existed pre-divestiture. If the monitoring trustee determines at least three years following the divestiture that the divested smart lock assets have diminished in competitive intensity and that such diminishment is in material part due to limitations on the acquirer's right to use the Yale brand name or trademarks in the United States and Canada, then the United States may seek divestiture of additional ASSA ABLOY Yale-related assets. Entry of the Proposed Final Judgment will terminate this action, except for any further proceedings arising out of the monitoring trustee's ongoing work, and except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

II. COMPLIANCE WITH THE TUNNEY ACT

The Certificate of Compliance filed with this Motion and Memorandum states that all the requirements of the Tunney Act have been satisfied. In particular, the Tunney Act requires a 60-day period for the submission of written comments relating to the proposed Final Judgment. 15 U.S.C. § 16(b). In compliance with the Tunney Act, the United States filed the Proposed Final Judgment and the CIS with the Court on May 5, 2023; published the proposed Final Judgment and CIS in the *Federal Register* on May 15, 2023, *see* 88 Fed. Reg. 31007 (May 15, 2023), and caused a summary of the terms of the Proposed Final Judgment and the CIS, along with directions for the submission of written comments, to be published in *The Washington Post* for seven days from May 12–18, 2023. The 60-day period for public comments has ended, and the United States received one comment during that period. Pursuant to 15 U.S.C. § 16(d), the United States filed the Response to Public Comment on September 1, 2023, ECF No. 134, and published it and the public comment in the *Federal Register* on September 11, 2023, *see* 88 Fed. Reg. 62392 (Sept. 11, 2023).

III. STANDARD OF JUDICIAL REVIEW

Under the Clayton Act, as amended by the Tunney Act, 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). 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

(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.

Id. Section 16(e)(2) of the Tunney Act states 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.” *Id.* § 16(e)(2). In its CIS and Response to Public Comments, the United States explained the meaning and the proper application of the public-interest standard under the Tunney Act to this case and now incorporates those statements by reference.

IV. THE COURT MAY CONCLUDE THAT ENTRY OF THE PROPOSED FINAL JUDGEMENT IS IN THE PUBLIC INTEREST

The United States alleged in its Complaint that ASSA ABLOY’s acquisition of Spectrum’s Hardware and Home Improvement division may substantially lessen competition in the markets for two types of residential door hardware (premium mechanical door hardware and smart locks) in the United States, in violation of Section 7 of the Clayton Act. As explained in the CIS and the Response to Public Comments, the Proposed Final Judgment is designed to

mitigate as many risks to competition alleged in the Complaint as possible by requiring, *inter alia*, (1) ASSA ABLOY to divest certain assets and (2) the appointment of a monitoring trustee to oversee Defendants' compliance with the terms of the Proposed Final Judgment and to investigate whether the divestitures replicate the competitive intensity in the residential smart locks market that existed pre-divestiture. The public, including affected competitors and customers, has had the opportunity to comment on the Proposed Final Judgment. As explained in the CIS and the Response to Public Comments, the United States believes that the Court will conclude that the Proposed Final Judgment is in the public interest under the Tunney Act.

V. CONCLUSION

For the reasons set forth in this Motion and Memorandum, the CIS, and the Response to Public Comments, the United States respectfully requests that the Court enter the Proposed Final Judgment.

Dated: September 13, 2023

Respectfully submitted,

/s/ Matthew R. Huppert

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CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2023, I caused the foregoing to be filed with the Clerk of Court using the Court's Electronic Document Filing System, which served copies on all counsel of record.

/s/ Matthew R. Huppert

Matthew R. Huppert
Counsel for Plaintiff United States of America