

Comments of Former Professional Employees of the Antitrust Division Regarding the Proposed Final Judgment in US v HPE and Juniper Networks, Inc.

After he was fired for “insubordination” the second-highest official in the Antitrust Division of the U.S. Department of Justice, Roger Alford, said that his superiors who negotiated the proposed settlement of this case

perverted justice and acted inconsistent with the rule of law. I am not given to hyperbole, and I do not say that lightly. As part of the forthcoming Tunney Act proceedings, it would be helpful for the court to clarify the substance and the process by which the settlement was reached. Although the Tunney Act has rarely served its intended purpose, this time the court may demand extensive discovery and examine the surprising truth of what happened. I hope the court blocks the HPE/Juniper merger. If you knew what I knew, you would hope so too. Someday I may have the opportunity to say more.¹

Mr. Alford should be given that opportunity in these proceedings.

But even without the benefit of his testimony, the record as it stands today provides no basis for a finding that the proposed Final Judgment in *U.S. v. HPE and Juniper Networks, Inc.*, is in the public interest. The Tunney Act requires the Defendants to describe certain settlement communications between their representatives and the government in a formal statement to the Court. The Defendants have utterly failed to provide the requisite information about those communications. The Tunney Act requires the government to explain how the proposed Final Judgment will remedy the anticompetitive effects of the acquisition challenged in the government’s Complaint. The government has utterly failed to provide such an explanation, which is not surprising because, on the current record, the proposed Final Judgment clearly will **not** address those anticompetitive effects. Rather, according to multiple press reports, the proposed settlement resulted from political back-scratching untethered by considerations of its (ineffectual) impact on competition.

These Comments are submitted on behalf of former professional employees of the Antitrust Division of the United States Department of Justice who, collectively, have decades of experience enforcing the antitrust laws.² We proudly assert that in our personal experience, the Antitrust Division’s resolutions of antitrust cases have been guided at all times by consideration

¹ Roger Alford, The Rule of Law Versus the Rule of Lobbyists at 3-4, *Tech Policy Institute Aspen Forum* (August 18, 2025),

<https://techpolicyinstitute.org/wp-content/uploads/2025/08/TPI-Aspen-Final.pdf> (“Alford speech”). Alford also said, “I am speaking out now because it is still early days . . . and I think correcting the problems at the DOJ is still possible, either by political will or judicial decree.”

² None of the signatories has any personal, financial, commercial, or professional interest in this matter except as described in these Comments.

of the public interest in competitive markets. Good-faith disagreements about what might best serve the public interest were commonplace; any suggestion that the competitive merits should be set aside because of political considerations was unheard of. That proud tradition seems to have been abandoned in this case.

In Part I of these Comments, we address the deficiencies in Defendants’ Tunney Act disclosures. In Part II, we explain the nature of the negotiations that led to the proposed Final Judgment and the reasons for suspicion that those negotiations reflected, in Mr. Alford’s words, the “Rule of Lobbyists” not the “Rule of Law.” In Part III, we explain why the proposed Final Judgment fails to provide a meaningful remedy for the competitive harm alleged in the government’s Complaint. Finally, in Part IV, we describe some of the additional information which the government should voluntarily provide to the Court and, failing that, which the Court should demand in its Tunney Act proceedings.

I. The Defendants Have Not Complied With The Tunney Act’s Disclosure Requirements

The Tunney Act requires the Defendants to submit to the Court a “description of any and all written or oral communications” between representatives of the Defendants and any “officer or employee of the United States,” excepting only communications by Defendants’ counsel of record either alone with the Attorney General or alone with other employees of the Justice Department. Communications between representatives of the Justice Department and counsel not of record for the Defendants must be described. Communications between any representatives of the Defendant and United States government officials outside of the Justice Department must also be described. 15 U.S.C. § 16(g).

The Defendants’ disclosures do not come close to satisfying those requirements. Their disclosures merely identify certain representatives of the Defendants who met with named representatives of the Department of Justice, and five dates on which such meetings occurred.³ Defendants do not assert that these representatives comprise all of the participants in those discussions, or that those five discussions were the only communications reportable under the Act.⁴ Defendants have not even disclosed which individuals participated in which meetings. Defendants have identified two consultants who have been named in media reports, Michael

³ Description and Certification of Written or Oral Communications by Hewlett Packard Enterprise Co. and Juniper Networks, Inc., Concerning the Proposed Final Judgment I, *U.S. v. Hewlett Packard Enterprise Co.*, No. 5:25-cv-00951-PCP (N.D. Cal. July 7, 2025), https://appliedantitrust.com/14_merger_litigation/cases_doj/hpe_juniper2025/02_ndcalif/settlement/hpe_ndcalif_settlement_comm_def2025_07_07.pdf. (“Defendants’ Tunney Disclosures”).

⁴ Defendants’ Tunney Disclosures I, https://appliedantitrust.com/14_merger_litigation/cases_doj/hpe_juniper2025/02_ndcalif/settlement/hpe_ndcalif_settlement_comm_def2025_07_07.pdf.

Davis and William Levi, but failed to identify another who has also been named, Arthur Schwartz, or others reported but unnamed by the press.⁵

Even worse, the Defendants provide no information about the substance of any of the communications, save for a single cryptic reference to “national security” concerns. Defendants have not described the substance of any communications concerning the terms of the proposed decree, the rationale for adopting the decree, whether (or how) the proposed decree would address the anticompetitive effects alleged in the government’s Complaint, or any alternative remedies that were discussed. The Tunney Act was intended to shine a light on the negotiations that led to the proposed decree. The Defendants’ “description” of their communications instead casts a murky haze over the entire backroom operation.

II. The Settlement Negotiations Were Highly Unusual

Where there is uncertainty about the integrity of the negotiation process that led to a proposed Final Judgment, the Tunney Act directs the Court to review that process and assess its legitimacy as part of its public-interest determination. In this case, the negotiation process was highly unusual in several respects. The lead negotiators for the Defendants reportedly were not their attorneys of record but rather consultants with close political ties to the Trump Administration⁶ who were hired after the Department filed its lawsuit.⁷ One reported consultant, Arthur Schwartz, has been described as a “close confidante of Vice President J. D. Vance.”⁸ Another of the Defendants’ consultants, Michael Davis, has been described as a “MAGA-aligned antitrust thought leader.”⁹ He publicly expressed support for the government’s challenge to the

⁵ Defendants’ Tunney Disclosures I, https://appliedantitrust.com/14_merger_litigation/cases_doj/hpe_juniper2025/02_ndcalif/settlement/hpe_ndcalif_settlement_comm_def2025_07_07.pdf.

⁶ HPE/Juniper: As Fight Between DOJ Leadership and Antitrust Division Broils, Tunney Act Proceeding Looms, Capitol Forum (July 24, 2025), <https://thecapitolforum.com/hpe-juniper-as-fight-between-doj-leadership-and-antitrust-division-broils/> (“Capitol Forum article”); David Dayen, The Law That Could Blow Open Trump Antitrust Corruption, *American Prospect* (7/29/2025), <https://prospect.org/power/2025-07-29-law-could-blow-open-trump-antitrust-corruption/>. (“Dayen article”).

⁷ Dayen article, <https://prospect.org/power/2025-07-29-law-could-blow-open-trump-antitrust-corruption/>.

⁸ Capitol Forum article, <https://thecapitolforum.com/hpe-juniper-as-fight-between-doj-leadership-and-antitrust-division-broils/>.

⁹ Capitol Forum article, <https://thecapitolforum.com/hpe-juniper-as-fight-between-doj-leadership-and-antitrust-division-broils/>.

HPE acquisition when it was filed,¹⁰ but after being hired by HPE for a reported seven-figure fee apparently advocated for the proposed decree.¹¹

For the Justice Department, negotiations apparently were largely handled by the Acting Associate Attorney General, Chad Mizelle.¹² One observer suggested that Mizelle became interested in the case because he hoped to impress the White House and thereby improve the chances that his wife, currently a federal District Court judge, would be elevated to the Eleventh Circuit.¹³ Mr. Alford later offered an alternative interpretation of Mizelle’s dealings with HPE representatives, saying that some “in government consider some parties, counsel, and lobbyists to be on the ‘same MAGA team’ and worthy of special solicitude. . . . In my opinion based on regular meetings with him, Chad Mizelle accepts party meetings and makes key decisions depending on whether the request or information comes from a MAGA friend.”¹⁴ HPE’s newly retained “MAGA-aligned” representative was just the sort of person likely to be viewed by Mizelle as a “friend.” Also reportedly involved in the negotiations on behalf of the Antitrust Division was Stanley Woodward, currently a top aide to the Attorney General and nominated to become the Justice Department’s Associate Attorney General, its third-ranking official.¹⁵ The career Antitrust Division staff who had been investigating the acquisition for months and were preparing for an imminent trial do not appear to have participated in the settlement discussions.

¹⁰ “The Trump 47 Justice Department’s Antitrust Division is already off to a strong start. 3 into 2? You must sue.” X Posting by Mike Davis (Jan. 30, 2025), <https://x.com/mrddmia/status/1885042892026069019>.

¹¹ Dayen article, <https://prospect.org/power/2025-07-29-law-could-blow-open-trump-antitrust-corruption/>.

¹² Dayen article, <https://prospect.org/power/2025-07-29-law-could-blow-open-trump-antitrust-corruption/>; *see also* Capitol Forum article, <https://thecapitolforum.com/hpe-juniper-as-fight-between-doj-leadership-and-antitrust-division-boils/>.

¹³ Dayen article, <https://prospect.org/power/2025-07-29-law-could-blow-open-trump-antitrust-corruption/>; *see also* Reposted Laura Loomer Tweet, since deleted, <https://x.com/matthewstoller/status/1949995374606745741> (“[Mizelle] turned a blind eye to the influence peddling because he wants his wife Kat Mizelle to be appointed to the 11th Circuit . . .”).

¹⁴ Alford speech at 4, <https://techpolicyinstitute.org/wp-content/uploads/2025/08/TPI-Aspen-Final.pdf>.

¹⁵ Dave Michaels, Bondi Aides Corrupted Antitrust Enforcement, Ousted DOJ Official Says, *Wall Street Journal* (Aug. 18, 2025) (Attachment A).

According to reports, the Assistant Attorney General for the Antitrust Division opposed the proposed settlement,¹⁶ as did Mr. Alford (the Principal Deputy Assistant Attorney General and the second highest ranking Antitrust Division official) and William Rinner (the Deputy Assistant Attorney General overseeing the Division’s merger enforcement).¹⁷ Both Mr. Alford and Mr. Rinner were fired soon after the settlement for “insubordination.”¹⁸ In an unusual development, none of the career staff who had investigated the acquisition signed the government’s Competitive Impact Statement, which is supposed to explain and defend the competitive effectiveness of the proposed Final Judgment.¹⁹

III. The Settlement Does Not Address The Harm To Competition Alleged in the Complaint

The Complaint alleges that HPE’s acquisition of Juniper would illegally “lessen competition in ... the market for enterprise grade WLAN solutions in the United States....”²⁰ The “solutions” in that market consist of bundles of products and software that provide networks to customers and monitor and manage those networks.²¹ Customers in the relevant market allegedly include businesses, universities, and other very large organizations that require a network to serve many users, sometimes over diverse geographic areas.²² According to the Complaint, the market was dominated by three firms: HPE, Juniper, and Cisco Systems, Inc. The combined market share of these three companies allegedly exceeded 70 percent.²³

According to the Complaint, market entry or expansion that could present a competitive challenge to the post-acquisition duopoly would be unlikely. An entrant would have to overcome

¹⁶ Capitol Forum article, <https://thecapitolforum.com/hpe-juniper-as-fight-beteen-doj-leadership-and-antitrust-division-broils/>.

¹⁷ Dave Michaels and Annie Linskey, MAGA Antitrust Agenda Under Siege by Lobbyists Close to Trump, *Wall Street Journal* (Aug. 6, 2025) (Attachment B) (“Michaels, Linskey WSJ article”). Mr. Alford later described the negotiation process as a “pay-to-play approach.” Alford speech, <https://techpolicyinstitute.org/wp-content/uploads/2025/08/TPI-Aspen-Final.pdf>.

¹⁸ Jody Godoy and Sarah Lynch, Two US Justice Dept antitrust officials fired over merger controversy, source says, *Reuters* (July 30, 2025), <https://www.reuters.com/legal/litigation/two-us-justice-dept-antitrust-officials-fired-over-merger-controversy-source-2025-07-29/>.

¹⁹ Competitive Impact Statement. *U.S. v. HPE and Juniper Networks, Inc.*, No. 5:25-cv-00951-PCP (N.D. Cal. June 27, 2025), <https://www.justice.gov/atr/media/1406601/dl?inline>. (“Competitive Impact Statement”).

²⁰ Complaint ¶ 61, *U.S. v. HPE and Juniper Networks, Inc.*, No. 5:25-cv-00951-PCP (N.D. Cal. Jan. 30, 2025), <https://www.justice.gov/atr/media/1406591/dl?inline>. (“Complaint”).

²¹ Complaint ¶¶ 13-15, <https://www.justice.gov/atr/media/1406591/dl?inline>.

²² Complaint ¶ 34, <https://www.justice.gov/atr/media/1406591/dl?inline>.

²³ Complaint ¶ 26, <https://www.justice.gov/atr/media/1406591/dl?inline>.

a variety of expensive, difficult, and time-consuming obstacles. These impediments to entry and expansion would include the development of name recognition and a reputation for reliable service; growing an adequate sales force and support capabilities; and recruiting resellers and other distribution partners.²⁴

The proposed Final Judgment purports to address those competitive concerns through two remedies: (1) the divestiture of HPE’s “Instant On” business and (2) an auction of the rights to use the source code for Juniper’s “AI Ops for Mist” software. DOJ consent decrees ordinarily not only name all assets to be transferred pursuant to the decree, but also describe them, often in considerable detail.²⁵ But the proposed decree in this case defines “AI Ops for Mist Source Code” only as “the source code for Juniper’s AI Ops for Mist software used in Juniper’s WLAN products.”²⁶ Beyond identifying the software as source code, the decree does not describe the functions of the software or indicate anything about its metes and bounds. Further, while the government’s Competitive Impact Statement claims that the software must be licensed “in such a way as to satisfy the United States, in its sole discretion, that the operations can and will be operated by the Licensee as a viable, ongoing business that can compete effectively in the relevant market,”²⁷ the proposed Final Judgment contains no such language. Nor does the Final Judgment (unlike the unenforceable Competitive Impact Statement) contain any other language to ensure that the software licensee could or would use the software to compete in the relevant market.

As for the Instant On business to be divested, neither the Competitive Impact Statement nor the proposed Final Judgment contains any language that would require sale to a purchaser that could and would use that asset to compete in the relevant market. Such a requirement has been a boilerplate component of virtually all of the Antitrust Division’s merger remedies until now.²⁸

²⁴ Complaint ¶¶ 52-54, <https://www.justice.gov/atr/media/1406591/dl?inline>.

²⁵ See, e.g., Proposed Final Judgment II.B., *U.S. v. Keysight Technologies, Inc.*, No. 1:25-cv-01734 (D.D.C. June 2, 2025), <https://www.justice.gov/atr/media/1402406/dl>. See also, the definition of “HPE Divestiture Assets” in the Proposed Final Judgment II.J., *U.S. v. HPE and Juniper Networks, Inc.*, No. 5:25-cv-00951-PCP (N.D. Cal. June 27, 2025), <https://www.justice.gov/atr/media/1406596/dl?inline>. (“proposed Final Judgment” or “proposed consent decree”).

²⁶ Proposed Final Judgment II.F., <https://www.justice.gov/atr/media/1406596/dl?inline>.

²⁷ Competitive Impact Statement at 8-9, <https://www.justice.gov/atr/media/1406601/dl?inline>.

²⁸ For example, proposed consent decrees filed by the Antitrust Division in August and June of this year both provide that the required divestiture “must include the entire Divestiture Assets and must be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by Acquirer as part of a viable, ongoing business . . .” Proposed Final Judgment IV.G., *U.S. v. UnitedHealth Group Inc.*, No. 1:24-cv-03267-JKB (D. Md. Aug. 7, 2025), <https://www.justice.gov/opa/media/1410291/dl>; Proposed Final Judgment

The reason for this departure from long-established practice can be easily explained. The Instant On business apparently does not compete in the relevant market. In a call with investors, HPE's CEO Antonio Neri explained that the product to be divested is "a distinct offering separate from the" products involved in the acquisition and is "specifically designed to serve the small business segment, . . ."²⁹ Instant On is a product for managing smaller networks, not the larger enterprise-grade networks that are the focus of the relevant antitrust market. Media reports have cited industry experts who agree with the CEO. One said, "[i]t's ridiculous. I have no idea what the DOJ was thinking – Instant On had nothing to do with the enterprise business. . . . It makes zero sense. Everybody that knows anything about the industry is scratching their heads. The whole terms of the settlement were absurd."³⁰

The proposed Final Judgment also requires the post-acquisition HPE to sell by auction a license to use the source code for Juniper's AI Ops for Mist software.³¹ This license, according to the Competitive Impact Statement, will strengthen one or more existing competitors or facilitate the entry of a new competitor for enterprise-grade WLAN solutions.³² But the competitive significance of this software is doubtful at best. A former Juniper executive who is now at HPE said, "We now have over 10 years of learning from real-world deployments, and that is extremely difficult, license or not, to replicate . . ."³³ Indeed, the proposed Final Judgment implies that the parties were unsure if the value of the license would exceed \$8 *million* dollars,³⁴ while the competitor that has been eliminated by the acquisition – Juniper – has a market value in excess of \$14 *billion* dollars.

IV.D, *U.S.v. Keysight Technologies, Inc.*, No. 1-25-cv-01734 (D.D.C. June 2, 2025), <https://www.justice.gov/opa/media/1402311/dl>.

²⁹ HPE Closes Juniper Networks acquisition, Transcript of investor call at 4, (July 10, 2025), <https://investors.hpe.com/~media/Files/H/HP-Enterprise-IR/documents/07-10-2025-hpe-closes-juniper-networks-acquisition-transcript.pdf>; see also Capitol Forum article, <https://thecapitolforum.com/hpe-juniper-as-fight-between-doj-leadership-and-antitrust-division-boils/>.

³⁰ Capitol Forum article, <https://thecapitolforum.com/hpe-juniper-as-fight-between-doj-leadership-and-antitrust-division-boils/>.

³¹ Proposed Final Judgment V., <https://www.justice.gov/atr/media/1406596/dl?inline>.

³² Competitive Impact Statement at 7, <https://www.justice.gov/atr/media/1406601/dl?inline>.

³³ Dan Meyer, Is HPE Juniper Safe From Tunney Act Review?, *SDX Central* (Aug. 6, 2025), <https://www.sdxcentral.com/news/is-hpe-juniper-safe-from-tunney-act-review/>.

³⁴ Proposed Final Judgment V.1.C.4., <https://www.justice.gov/atr/media/1406596/dl?inline>.

The proposed Final Judgment also grants the Defendants an unusually long period of time to complete the divestiture – at least 180 days³⁵ rather than the maximum of at least 90 days specified in the Antitrust Division's Merger Remedies Manual.³⁶ Again, the Competitive Impact Statement does not explain the departure from ordinary practice, especially in this case, where the acquisition was permitted to close on July 2, 2025.³⁷ To state the obvious, even if the proposed remedy could somehow mitigate the competitive harm resulting from the acquisition, it can provide no such benefit during the lengthy period before the remedy is actually implemented.

Finally, neither the proposed Final Judgment nor the Competitive Impact Statement discloses the existence of a reported additional element of the agreement between the parties. According to the *Wall Street Journal*, the Defendants agreed that HPE would create new jobs at a facility located in the United States.³⁸ Reportedly this provision was intended to further the Trump administration's goal of creating more domestic jobs. According to the *Journal*, the provision was omitted from the proposed decree because of uncertainty about whether it can legally be incorporated into a government antitrust decree; the *Journal* reported that this issue is currently being reviewed by the Justice Department's Office of Legal Counsel.³⁹ A spokesman for HPE has denied that the settlement included a commitment to create jobs.⁴⁰

IV. The Government Should Offer, Or The Court Should Demand, Additional Evidence

To achieve its goal of ensuring that entry of a proposed Final Judgment is in the public interest, the Tunney Act expressly directs the Court to evaluate the “competitive impact” of the proposed judgment, including the “termination of alleged violations,” the “anticipated effects of alternative remedies actually considered . . . 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.” 15 U.S.C. § 16(e)(1)(A). The Act also directs the Court to consider “the impact of entry of such judgment upon competition in the

³⁵ Proposed Final Judgment IV.1.A. The proposed decree also specifies an alternative deadline, 5 days after the Court's entry of the Final Judgment. Whichever date occurs later is to govern. Proposed Final Judgment IV.1.A, <https://www.justice.gov/atr/media/1406596/dl?inline>.

³⁶ Antitrust Division of the Department of Justice, Merger Remedies Manual at 27 (Sept. 2020), <https://www.justice.gov/atr/page/file/1312416/dl>.

³⁷ Hewlett Packard Enterprise closes acquisition of Juniper Networks, HPE Newsroom (July 2, 2025), <https://www.hpe.com/us/en/newsroom/press-release/2025/07/hewlett-packard-enterprise-closes-aquisition-of-juniper-networks-to-offer-industry-leading-comprehensive-cloud-native-ai-driven-portfolio.html>.

³⁸ Michaels, Linskey WSJ article (Attachment B).

³⁹ Michaels, Linskey WSJ article (Attachment B).

⁴⁰ Michaels, Linskey WSJ article (Attachment B).

relevant market or markets.” 15 U.S.C. § 16(e)(1)(B). Interpreting this language, the D.C. Court of Appeals wrote in a leading Tunney Act appellate decision, “the court can and should inquire, . . . into the purpose, meaning, and efficacy of the decree” in addressing the harm alleged in the Complaint.⁴¹

Review of the negotiation process that leads to a proposed consent decree informs analysis of the competitive effectiveness of that decree. The Act directs the Court to inquire into the integrity of the negotiation process when circumstances warrant. After a district court failed, in the eyes of Congress, to conduct a thorough enough inquiry into a proposed Antitrust Division decree in 2001,⁴² Congress amended the Tunney Act to provide that the court “shall consider” certain factors in determining whether entry of a proposed decree is in the public interest. 15 U.S.C. § 16 (e)(1). The statute as initially passed had said only that a court “may consider” those factors.⁴³

Among other things, the Tunney Act specifically authorizes the District Court to:

Take testimony of government officials or experts, or other expert witnesses, on motion of any party or on the Court’s own motion. 15 U.S.C. § 16(f)(1);

Appoint a special master and such outside consultants or expert witnesses as the Court may deem appropriate. 15 U.S.C. § 16(f)(2);

Authorize participation in proceedings before the Court by interested persons or agencies. 15 U.S.C. § 16(f)(3);

Review comments and objections filed with the United States regarding the proposed decree and related filings. 15 U.S.C. § 16(f)(4); and

Take such other action in the public interest as the court may deem appropriate. 15 U.S.C. § 16(f)(5).

⁴¹ *U.S. v. Microsoft Corp.*, 56 F.3d 1448 (D.C. Cir. 1995).

⁴² John Wilke, A Tenacious Microsoft Emerges From Suit With Its Software Monopoly Largely Intact, *Wall Street Journal* (Nov. 9, 2001) (Attachment C).

⁴³ July 28, 2025 Letter to The Honorable P. Casey Pitts from Senators Elizabeth Warren, Amy Klobuchar, Cory Booker, and Richard Blumenthal at 5, https://www.warren.senate.gov/imo/media/doc/letter_from_senator_warren_to_judge_pitts_on_hpe-juniper_merger_and_tunney_act.pdf (Senators’ letter”).

This authority has been exercised in the recent past. In 2019, a judge held a two-day hearing with six live witnesses about the proposed settlement in *U.S. v. CVS Health Corp.*⁴⁴

We urge the government (and/or the Defendants) to supplement the Competitive Impact Statement to address the concerns raised in these comments. To the extent the government fails to do so, the Court should exercise its authority under the Tunney Act to demand answers. The Court should not reach any public interest finding until it has answers to these, and other, questions:

- (1) Have the Defendants disclosed **all** communications concerning the proposed settlement (save for those specifically excepted by the Tunney Act)? Separately for each communication, which individuals participated? And what was the **substance** of each communication?
- (2) Who were the principal negotiators of the settlement for the government? Why were they selected for this role, and who selected them? What role, if any, did the Assistant Attorney General for Antitrust and her deputies play in the negotiations? What role, if any, did the career Antitrust Division staff play in the negotiations?
- (3) Did the parties reach any agreement or make any commitments other than those expressly incorporated in the proposed Final Judgment? If the parties reached any agreement regarding the creation of new jobs by HPE in one of its facilities in the United States, what are its terms? If the parties reached any such agreement, why was it not included in the proposed Final Judgment? How if at all did any such agreement address the competitive harm alleged in the Complaint? If there is such an agreement, is the Office of Legal Counsel reviewing its legality? Has that office reached a decision? If yes, what is it? If no, when is a decision expected?
- (4) We presume that the government planned to present the testimony of one or more expert witnesses at trial and that any such expert had already prepared a report (and likely had been deposed) when the settlement was reached shortly before the trial was scheduled to begin. Such expert testimony likely would have addressed matters such as (a) which firms and products do or do not compete in the relevant market, and (b) what obstacles would a potential competitor have to overcome in order to enter and successfully compete in the relevant market. The government should submit, or if necessary the Court should demand, any such expert reports and deposition transcripts.

⁴⁴ Memorandum Opinion, *U.S. v. CVS Health Corp.*, No. 18-2340, (D.D.C. Sept. 4, 2019), <https://law.justia.com/cases/federal/district-courts/district-of-columbia/dcdce/1:2018cv02340/200760/135/>. See also, Capitol Forum article, <https://thecapitolforum.com/hpe-juniper-as-fight-beteen-doj-leadership-and-antitrust-division-bro/ils>.

(5) What price has HPE projected it will receive for the Instant On business and the AI Ops for Mist software license? Has HPE taken any steps in anticipation of the sale/licensing that would be required under the Final Judgment? Has HPE identified firms that are likely acquirers of those assets?

(6) The Court should take the testimony of Abigail Slater (Assistant Attorney General for Antitrust) and the two Deputy Assistant Attorneys General (Roger Alford and William Rinner) who were fired for “insubordination.” They should be asked to provide their assessments of the effects of the settlement on competition in the relevant market and the propriety (or impropriety) of the settlement.

Conclusion

The current record does not support a finding that the proposed Final Judgment is in the public interest.

Respectfully submitted,

The signatories to these Comments are each speaking in their own, individual capacity and not on behalf of any institution or organization with which they are affiliated.

<i>Name</i>	<i>Highest Title at the Antitrust Division</i>	<i>Years at the Division</i>
William Baer	Assistant Attorney General (Acting Associate Attorney General 2016-2017)	2013-2016
George S. Baranko	Trial Attorney	1987-2020
Anne K. Bingaman	Assistant Attorney General	1993-1996
David A. Blotner	Assistant Chief, Litigation I; Assistant Chief, Litigation II	1979-2012
Laury Bobbish	Chief, Telecommunications & Media Section	1988-2012
Hillary Burchuk	Trial Attorney	1996-2011
Peter C. Carstensen	Trial Attorney	1968-1973
Arnold Celnicker	Trial Attorney	1991-2005
Patricia Chick	Trial Attorney	1976-2004

Rebecca P. Dick	Director, Civil Non-Merger Enforcement	1979-2000
Lawrence M. Frankel	Assistant Chief, Telecommunications & Media Section	1993-2018
Thomas L. Greaney	Assistant Chief, Special Litigation Section	1978-1987
Nina B. Hale	Assistant Chief, Litigation III Section	1994-2021
Burney P. Huber	Senior Trial Attorney	1973-2005
Matthew C. Hammond	Assistant Chief, Media, Entertainment & Communications Section	1998-2024
Donna Kooperstein	Chief, Transportation, Energy & Agriculture Section	1979-2011
Robert E. Litan	Deputy Assistant Attorney General	1993-95
Sanford Litvack	Assistant Attorney General	1979-1981
Phillip Malone	Senior Trial Attorney	1984-2003
Frances Marshall	Assistant Chief, Legal Policy Section; Senior Counsel, Intellectual Property	1994-2020
Mary Beth McGee	Trial Attorney	1981-2016
Michael D. McNeely	Trial Attorney	1976-1988
A. Douglas Melamed	Acting Assistant Attorney General	1996-2001
M.J. Moltenbrey	Director, Civil Enforcement	1985-2002
Rosemary T. Rakas	Trial Attorney	1984-1988
Constance K. Robinson	Director of Operations and Director of Merger Enforcement	1976-2003
Donald J. Russell	Chief, Telecommunications Section	1977-2001
Philip Sauntry	Trial Attorney	1975-2010

Katherine A. Schlech	Assistant Chief Dallas Field Office	1980-2014
Jack Sidorov	Trial Attorney	1978-2014
Yvette Frances Tarlov	Chief, Media, Entertainment & Communications Section	1995-2025
Willard K. Tom	Trial Attorney Counselor to the Assistant Attorney General	1979-1981 1993-1995
David Turetsky	Deputy Assistant Attorney General	1993-1997
Phillip L. Verveer	Trial Attorney	1969-1977