Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on behalf of Westinghouse Solar, Inc. on October 4, 2011. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain integrated solar systems and components thereof. The complaint names as respondents Zep Solar, Inc. of CA; Canadian Solar Inc. of Canada; and Canadian Solar (USA) Inc. of CA.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number (''Docket No. 2847'') in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

By order of the Commission.

Issued: October 4, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–26097 Filed 10–7–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–318 and 731–TA–538 and 561 (Third Review)]

Sulfanilic Acid From China and India

Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), that revocation of the countervailing duty order on sulfanilic acid from India and antidumping duty orders on sulfanilic acid from China and India would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on April 1, 2011 (76 FR 18248) and determined on July 5, 2011 that it would conduct expedited reviews (76 FR 50756, August 16, 2011).

The Commission transmitted its determination in these reviews to the Secretary of Commerce on October 4, 2011. The views of the Commission are contained in USITC Publication 4270 (October 2011), entitled *Sulfanilic Acid From China and India: Investigation Nos. 701–TA–318 and 731–TA–538 and 561 (Third Review).*

By order of the Commission.

Issued: October 4, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–26114 Filed 10–7–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Morgan Stanley; 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, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Southern District of New York in *United States of America v. Morgan Stanley,* Civil Action No. 11–Civ–6875. On September 30, 2011, the United States filed a

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Complaint alleging that a subsidiary of Morgan Stanley entered into an agreement with KeySpan Corporation, the likely effect of which was to increase prices in the New York City (NYISO Zone J) Capacity Market, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment, submitted at the same time as the Complaint, requires Morgan Stanley to pay the government $4.8 million dollars.

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

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to William H. Stallings, Chief, Transportation Energy and Agriculture Section, Antitrust Division, Department of Justice, Washington, DC 20530, (*telephone:* 202–514–9323).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the Southern District of New York

United States of America, U.S. Department of Justice, Antitrust Division, 450 5th Street, NW., Suite 8000, Washington, DC 20530, *Plaintiff,*

v.

Morgan Stanley, 1585 Broadway, New York, N.Y. 10036, *Defendant.*

Civil Action No.: 11-civ-6875.

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action under Section 4 of the Sherman Act, as amended, 15 U.S.C. 4, to obtain equitable and other relief from Defendant's violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. 1.

On January 18, 2006, KeySpan Corporation (''KeySpan'') and Morgan Stanley Capital Group Inc. (''MSGC''), a subsidiary of defendant Morgan Stanley,[1] executed an agreement (the ''Morgan/KeySpan Swap'') that ensured that KeySpan would withhold substantial output from the New York City electricity generating capacity market, a market that was created to ensure the supply of sufficient generation capacity for New York City consumers of electricity. The likely effect of the Morgan/KeySpan Swap was to increase capacity prices for the retail electricity suppliers who must purchase capacity, and, in turn, to increase the prices consumers pay for electricity. For its part, Morgan enjoyed profits arising from revenues earned in connection with the Morgan/KeySpan Swap.

I. Introduction

1. Between 2003 and 2006, KeySpan, the largest seller of electricity generating capacity (''installed capacity'') in the New York City market, earned substantial revenues due to tight supply conditions. Because purchasers of capacity required almost all of KeySpan's output to meet expected demand, KeySpan's ability to set price levels was limited only by a regulatory ceiling (called a ''bid cap''). Indeed, the market price for capacity was consistently at or near KeySpan's bid cap, with KeySpan sacrificing sales on only a small fraction of its capacity.

2. But market conditions were about to change. Two large, new electricity generation plants were slated to come on line in 2006 (with no exit expected until at least 2009), breaking the capacity shortage that had kept prices at the capped levels.

3. KeySpan could prevent the new capacity from lowering prices by withholding a substantial amount of its own capacity from the market. This ''bid the cap'' strategy would keep market prices high, but at a significant cost—the sacrificed sales would reduce KeySpan's revenues by as much as $90 million per year. Alternatively, KeySpan could compete with its rivals for sales by bidding more capacity at lower prices. This ''competitive strategy'' could earn KeySpan more than bidding its cap, but it carried a risk—KeySpan's competitors could undercut its price and take sales away, making the strategy less profitable than ''bidding the cap.''

4. KeySpan searched for a way to avoid both the revenue decline from bidding its cap and the revenue risks of competitive bidding. It decided to enter into an agreement that gave it a financial interest in the capacity of Astoria—KeySpan's largest competitor. By providing KeySpan revenues on a larger base of sales, such an agreement would make KeySpan's ''bid the cap'' strategy more profitable than a successful competitive bid strategy. Rather than directly approach its competitor, KeySpan turned to Morgan to act as the counterparty to the agreement—the Morgan/KeySpan Swap—recognizing that Morgan would, and in fact did, enter into an offsetting agreement with Astoria (the ''Morgan/Astoria Hedge'').

5. Morgan recognized that it could profit from combining the economic interests of KeySpan and Astoria. Morgan extracted revenues by entering into the financial instruments and thereby stepping into the middle of the two companies. With KeySpan deriving revenues from both its own and Astoria's capacity, the Morgan/KeySpan Swap removed any incentive for KeySpan to bid competitively, locking it into bidding its cap. Capacity prices remained as high as if no entry had occurred.

II. Defendant

6. Morgan Stanley is a Delaware corporation with its principal place of business in New York City. Morgan Stanley provides diversified financial services, operating a global asset management business, investment banking services, and a global securities business, including a commodities trading division. Morgan Stanley Capital Group, Inc., a wholly owned subsidiary of Morgan Stanley, functions as and is publicly referred to as the commodities trading division for the parent company Morgan Stanley. In 2010, Morgan Stanley had revenues of $31.6 billion.

III. Jurisdiction and Venue

7. The United States files this complaint under Section 4 of the Sherman Act, 15 U.S.C. 4, seeking equitable relief from Defendant's violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

8. This court has jurisdiction over this matter pursuant to 15 U.S.C. 4 and 28 U.S.C. 1331 and 1337.

9. Defendant waives any objection to venue and personal jurisdiction in this judicial district for the purpose of this Complaint.

10. Defendant engaged in interstate commerce during the relevant period of the allegations in this Complaint; Morgan is a worldwide company that regularly engages in financial transactions across the country and throughout the world.

IV. The New York City Installed Capacity Market

11. Sellers of retail electricity must purchase a product from generators

[1] MSCG and Morgan Stanley are collectively referred to hereinafter as ''Morgan.''

known as ''installed capacity.'' Installed capacity is a product created by the New York Independent System Operator (''NYISO'') to ensure that sufficient generation capacity exists to meet expected electricity needs. Companies selling electricity to consumers in New York City are required to make installed capacity payments that relate to their expected peak demand plus a share of reserve capacity (to cover extra facilities needed in case a generating facility breaks down). These payments assure that retail electric companies do not sell more electricity than the system can deliver and also encourage electric generating companies to build new facilities as needed.

12. The price for installed capacity has been set through auctions administered by the NYISO. The rules under which these auctions are conducted have changed from time to time. Unless otherwise noted, the description of the installed capacity market in the following paragraphs relates to the period May 2003 through March 2008.

13. Because transmission constraints limit the amount of energy that can be imported into the New York City area from the power grid, the NYISO requires retail providers of electricity to customers in New York City to purchase 80% of their capacity from generators in that region. The NYISO operates separate capacity auctions for the New York City region (also known as ''In-City'' and ''Zone J''). The NYISO organizes the auctions to serve two distinct seasonal periods, summer (May through October) and winter (November through April). For each season, the NYISO conducts seasonal, monthly and spot auctions in which capacity can be acquired for all or some of the seasonal period.

14. In each of the types of auctions, capacity suppliers offer price and quantity bids. Supplier bids are ''stacked'' from lowest-priced to highest, and compared to the total amount of demand being satisfied in the auction. The offering price of the last bid in the ''stack'' needed to meet requisite demand establishes the market price for all capacity bid into that auction. Capacity bid at higher than this price is unsold, as is any excess capacity bid at what becomes the market price.

15. The New York City Installed Capacity (''NYC Capacity'') Market constitutes a relevant geographic and product market.

16. The NYC Capacity Market is highly concentrated, with three firms—KeySpan, NRG Energy, Inc. (''NRG'') and Astoria Generating Company Acquisitions, L.L.C. (a joint venture of Madison Dearborn Partners, LLC and US Power Generating Company, which purchased the Astoria generating assets from Reliant Energy, Inc. in February 2006)—controlling a substantial portion of generating capacity in the market. Because purchasers of capacity require at least some of each of these three suppliers' output to meet expected demand, the firms are subject to a bid and price cap for nearly all of their generating capacity in New York City and are not allowed to sell that capacity outside of the NYISO auction process. The NYISO-set bid cap for KeySpan is the highest of the three firms, followed by NRG and Astoria.

17. KeySpan possessed market power in the NYC Capacity Market.

18. It is difficult and time-consuming to build or expand generating facilities within the NYC Capacity Market given limited undeveloped space for building or expanding generating facilities and extensive regulatory obligations.

V. Keyspan's Plan To Avoid Competition

19. From June 2003 through December 2005, KeySpan set the market price in the New York City spot auction by bidding its capacity at its cap. Given extremely tight supply and demand conditions, KeySpan needed to withhold only a small amount of capacity to ensure that the market cleared at its cap.

20. KeySpan anticipated that the tight supply and demand conditions in the NYC Capacity Market would change in 2006, due to the entry of approximately 1000 MW of new generation. Because of the addition of this new capacity, KeySpan would have to withhold significantly more capacity from the market and would earn substantially lower revenues if it continued to bid all of its capacity at its bid cap. KeySpan anticipated that demand growth and retirement of old generation units would restore tight supply and demand conditions in 2009.

21. KeySpan could no longer be confident that ''bidding the cap'' would remain its best strategy during the 2006–2009 period. It considered various competitive bidding strategies under which KeySpan would compete with its rivals for sales by bidding more capacity at lower prices. These strategies could potentially produce much higher returns for KeySpan but carried the risk that competitors would undercut its price and take sales away, making the strategy less profitable than ''bidding the cap.''

22. KeySpan also considered acquiring Astoria's generating assets, which were for sale. This would have solved the problem that new entry posed for KeySpan's revenue stream, as Astoria's capacity would have provided KeySpan with sufficient additional revenues to make continuing to ''bid the cap'' its best strategy. KeySpan consulted with Morgan about acquiring the assets. But KeySpan soon concluded that its acquisition of its largest competitor would raise serious market power issues and communicated that conclusion to Morgan.

23. Instead of purchasing the Astoria assets, KeySpan decided to acquire a financial interest in substantially all of Astoria's capacity. KeySpan would pay Astoria's owner a fixed revenue stream in return for the revenues generated from Astoria's capacity sales in the auctions.

24. KeySpan did not approach Astoria directly, instead approaching Morgan to arrange a financial agreement providing KeySpan with payments derived from the market clearing price for an amount of capacity essentially equivalent to what Astoria owned. KeySpan recognized that Morgan would need simultaneously to enter into an off-setting financial agreement with another capacity supplier. Morgan agreed to such a Swap but, as expected, informed KeySpan that the agreement was contingent on Morgan entering into an offsetting agreement with the owner of the Astoria assets.

VI. Morgan's Agreements With Keyspan and Astoria

25. Over the course of late 2005, Morgan negotiated the terms of the derivative agreements with Astoria and KeySpan. Those negotiations illustrate that Morgan recognized its role as a principal in effectively combining the capacity of the two companies. Under the terms initially discussed with Astoria, Morgan would have controlled the bidding of Astoria's capacity. Morgan also proposed that the financial derivative with Astoria be converted into a physical contract, transferring the rights to Astoria's capacity to Morgan in exchange for fixed payments, in the event that the structure of the auction market was disrupted; and, at the same time, Morgan proposed in its negotiations with KeySpan to transfer this physical capacity to KeySpan should a market disruption occur.

26. On or about January 9, 2006, KeySpan and Morgan finalized the terms of the Morgan/KeySpan Swap. Under the agreement, if the market price for capacity was above $7.57 per kW-month, Morgan would pay KeySpan the difference between the market price and $7.57 times 1800 MW; if the market price was below $7.57, KeySpan would

pay Morgan the difference times 1800 MW.

27. The Morgan/KeySpan Swap was executed on January 18, 2006. The term of the Morgan/KeySpan Swap ran from May 2006 through April 2009.

28. On or about January 9, 2006, Morgan and Astoria finalized the terms of the Morgan/Astoria Hedge. Under that agreement, if the market price for capacity was above $7.07 per kW-month, Astoria would pay Morgan the difference times 1800 MW; if the market price was below $7.07, Astoria would be paid the difference times 1800 MW.

29. The Morgan/Astoria Hedge was executed on January 11, 2006. The term of the Morgan/Astoria Hedge ran from May 2006 through April 2009, matching the duration of the Morgan/KeySpan Swap.

VII. The Competitive Effect of the Morgan/Keyspan Swap

30. The clear tendency of the Morgan/KeySpan Swap was to alter KeySpan's bidding in the NYC Capacity Market auctions.

31. Without the Morgan/KeySpan Swap, KeySpan likely would have chosen from a range of potentially profitable competitive strategies in response to the entry of new capacity. Had it done so, the price of capacity would have declined. By transferring a financial interest in Astoria's capacity to KeySpan, however, the Morgan/KeySpan Swap effectively eliminated KeySpan's incentive to compete for sales in the same way a purchase of Astoria or a direct agreement between KeySpan and Astoria would have done. By providing KeySpan revenues from Astoria's capacity, in addition to KeySpan's own revenues, the Morgan/KeySpan Swap made bidding the cap KeySpan's most profitable strategy regardless of its rivals' bids.

32. After the Morgan/KeySpan Swap went into effect in May 2006, KeySpan paid and received revenues under the agreement with Morgan and consistently bid its capacity at its cap even though a significant portion of its capacity went unsold. Despite the addition of significant new generating capacity in New York City, the market price of capacity did not decline.

33. In August 2007, the State of New York conditioned the sale of KeySpan to a new owner on the divestiture of KeySpan's Ravenswood generating assets and required KeySpan to bid its New York City capacity at zero from March 2008 until the divestiture was completed. Since March 2008, the market price for capacity has declined.

34. But for the Morgan/KeySpan Swap, installed capacity likely would have been procured at a lower price in New York City from May 2006 through February 2008.

35. From May 2006 to April 2008, Morgan earned approximately $21.6 million in net revenues from the Morgan/KeySpan Swap and the Morgan/Astoria Hedge.

36. The Morgan/KeySpan Swap produced no countervailing efficiencies.

VIII. Violation Alleged

37. Plaintiff incorporates the allegations of paragraphs 1 through 36 above.

38. Morgan entered into an agreement the likely effect of which has been to increase prices in the NYC Capacity Market, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

IX. Prayer for Relief

Wherefore, Plaintiff prays:

39. That the Court adjudge and decree that the Morgan/KeySpan Swap constitutes an illegal restraint in the sale of installed capacity in the New York City market in violation of Section 1 of the Sherman Act;

40. That Plaintiff shall have such other relief, including equitable monetary relief, as the nature of this case may require and as is just and proper to prevent the recurrence of the alleged violation and to dissipate the anticompetitive effects of the violation; and

41. That Plaintiff recover the costs of this action.

Dated: September 30, 2011.

Respectfully submitted,

For Plaintiff United States.

Sharis A. Pozen,
Acting Assistant Attorney General for Antitrust.

Joseph F. Wayland,
Deputy Assistant Attorney General.

Patricia A. Brink,
Director of Civil Enforcement.

Wlliam H. Stallings,
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Jade Eaton,
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J. Richard Doidge,
John W. Elias, Attorneys for the United States.

United States of America, *Plaintiff,*
v.
Morgan Stanley, *Defendant.*

Civil Action No.: 11–civ–6875.

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceedings

The United States brought this lawsuit against Defendant Morgan Stanley (''Morgan'') on September 30, 2011, to remedy a violation of Section 1 of the Sherman Act, 15 U.S.C. 1. In January 2006, Morgan Stanley Capital Group Inc. (''MSGC''), a subsidiary of defendant Morgan Stanley,[2]executed agreements with KeySpan Corporation (''KeySpan'') and Astoria Generating Company Acquisitions, L.L.C. (''Astoria'') that would effectively combine the economic interests of the two largest competitors in the New York City electric capacity market. By creating this combination, the likely effect of the agreements was to increase capacity prices for the retail electricity suppliers who must purchase capacity, and, in turn, to increase the prices consumers pay for electricity.

The proposed Final Judgment remedies this violation by requiring Morgan to disgorge profits obtained through the anticompetitive agreement. Under the terms of the proposed Final Judgment, Morgan will surrender $4.8 million to the Treasury of the United States. Disgorgement will deter Morgan and others from future violations of the antitrust laws.

The United States and Morgan have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that this Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations thereof.

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

A. The Defendant

Morgan Stanley is a Delaware corporation with its principal place of business in New York City. Morgan Stanley provides diversified financial services, operating a global asset

[2] MSCG and Morgan Stanley are collectively referred to hereinafter as ''Morgan.''

management business, investment banking services, and a global securities business, including a commodities trading division. In 2010, Morgan Stanley had revenues of $31.6 billion. Morgan Stanley Capital Group, Inc., a wholly owned subsidiary of Morgan Stanley, functions as and is publicly referred to as the commodities trading division for the parent company Morgan Stanley.

B. The Market

In the state of New York, sellers of retail electricity must purchase a product from generators known as installed capacity (''capacity'').[3] Electricity retailers are required to purchase capacity in an amount equal to their expected peak energy demand plus a share of reserve capacity. These payments assure that retail electric companies do not use more electricity than the system can deliver and encourage electric generating companies to build new facilities as needed. Because transmission constraints limit the amount of energy that can be imported into the New York City area from the power grid, the New York Independent System Operator (''NYISO'') requires retail providers of electricity to customers in New York City to purchase 80% of their capacity from generators in that region. Thus, the New York City Installed Capacity (''NYC Capacity'') Market constitutes a relevant geographic and product market.

The price for installed capacity has been set through auctions administered by the NYISO. The NYISO organizes the auctions to serve two distinct seasonal periods, summer (May though October) and winter (November through April). For each season, the NYISO conducts seasonal, monthly, and spot auctions in which capacity can be acquired for all or some of the seasonal period. Capacity suppliers offer price and quantity bids in each of these three auctions. Supplier bids are ''stacked'' from lowest-priced to highest. The stack is then compared to the amount of demand. The offering price of the last bid in the ''stack'' needed to meet requisite demand establishes the market price for all capacity sold into that auction. Any capacity bid at higher than this price is unsold, as is any excess capacity bid at what becomes the market price.

The NYC Capacity Market was highly concentrated during the relevant period, with three firms—Astoria, NRG Energy, Inc., and KeySpan—controlling a substantial portion of the market's generating capacity. These three were designated as pivotal suppliers by the Federal Energy Regulatory Commission, meaning that at least some of each of these three suppliers' output was required to satisfy demand. The three firms were subject to bid and price caps—KeySpan's being the highest—for nearly all of their generating capacity in New York City and were not allowed to sell their capacity outside of the NYISO auction process.

C. The Alleged Violation

1. KeySpan Assesses Plans for Changed Market Conditions

From June 2003 through December 2005, almost all installed capacity in the market was needed to meet demand. With these tight market conditions, KeySpan could sell almost all of its capacity into the market, even while bidding at its cap. KeySpan did so, and the market cleared at the price established by the cap, with only a small fraction of KeySpan's capacity remaining unsold.

KeySpan anticipated that the tight supply and demand conditions in the NYC Capacity Market would end in 2006 due to the entry into the market of approximately 1000 MW of generation capacity, and would not return until 2009 with the retirement of old generation units and demand growth.

KeySpan could no longer be confident that ''bid the cap'' would remain its best strategy during the 2006–2009 period. The ''bid the cap'' strategy would keep market prices high, but at a significant cost. KeySpan would have to withhold a significant additional amount of capacity to account for the new entry. The additional withholding would reduce KeySpan's revenues by as much as $90 million per year. Alternatively, KeySpan could compete with its rivals for sales by bidding more capacity at lower prices. KeySpan considered various competitive bidding strategies. These could potentially produce much higher returns for KeySpan than bidding the cap but carried the risk that competitors would undercut its price and take sales away, making the strategy potentially less profitable than bidding the cap.

KeySpan also considered acquiring Astoria's generating assets from Reliant Energy, Inc., which was putting them up for sale. This would have solved the problem that new entry posed for KeySpan's revenue stream, as Astoria's capacity would have provided KeySpan with sufficient additional revenues to make continuing to ''bid the cap'' its best strategy. Simultaneously, Morgan was interested in buying the same assets and seeking a strategic partner with whom to bid. Morgan and KeySpan discussed such a partnership and the market power issues of a bid involving KeySpan. KeySpan soon concluded that its acquisition of its largest competitor would raise serious market power issues and communicated that conclusion to Morgan.

2. Morgan Facilitates the Anticompetitive and Unlawful Agreement

Instead of purchasing the Astoria assets, KeySpan decided to acquire a financial interest in substantially all of Astoria's capacity. KeySpan would pay Astoria's owner a fixed revenue stream in return for the revenues generated from Astoria's capacity sales in the auctions.

KeySpan realized that it could not approach the owner of Astoria assets directly, so it turned to Morgan to act as a counter-party. Morgan agreed to serve as the counter-party but informed KeySpan that the agreement was contingent on it entering into an offsetting agreement with the owner of the Astoria generating assets.

On or about January 9, 2006, KeySpan and Morgan finalized the terms of a financial derivative arrangement between the two companies, ''the Morgan/KeySpan Swap.'' Under the agreement, if the market price for capacity was above $7.57 per kW-month, Morgan would pay KeySpan the difference between the market price and $7.57 times 1800 MW; if the market price was below $7.57, KeySpan would pay Morgan the difference times 1800 MW. The Morgan/KeySpan Swap was executed on January 18, 2006. The term of the Morgan/KeySpan Swap ran from May 2006 through April 2009.

On or about January 9, 2006, Morgan and Astoria finalized the terms of the offsetting agreement (''Morgan/Astoria Hedge''). Under that agreement, if the market price for capacity was above $7.07 per kW-month, Astoria would pay Morgan the difference times 1800 MW; if the market price was below $7.07, Astoria would be paid the difference times 1800 MW. The Morgan/Astoria Hedge was executed on January 11, 2006. The term of the Morgan/Astoria Hedge ran from May 2006 through April 2009, matching the duration of the Morgan/KeySpan Swap.

Morgan earned approximately $21.6 million in net revenues from the Morgan/KeySpan Swap and the Morgan/Astoria Hedge.

3. The Effect of the Morgan/KeySpan Swap

After the Morgan/KeySpan Swap went into effect in May 2006, KeySpan

[3] Except where noted otherwise, this description pertains to the market conditions that existed from May 2003 through March 2008.

consistently bid its capacity into the capacity auctions at its cap even though a significant portion of its capacity went unsold. Despite the addition of significant new generating capacity in New York City, the market price of capacity did not decline.

The clear tendency of the Morgan/KeySpan Swap was to alter KeySpan's bidding in the NYC Capacity Market auctions. The swap effectively eliminated KeySpan's incentive to compete for sales in the same way a purchase of Astoria or a direct agreement between KeySpan and Astoria would have done. By adding revenues from Astoria's capacity to KeySpan's own, the Morgan/KeySpan Swap made bidding the cap KeySpan's most profitable strategy regardless of its rivals' bids. Without the swap, KeySpan likely would have chosen from a range of potentially profitable competitive strategies in response to the entry of new capacity and, had it done so, the price of capacity would have declined. The swap produced no countervailing efficiencies.

III. United States v. *Keyspan Corporation*

On February 22, 2010, the United States filed suit against KeySpan for its role in the Morgan/KeySpan Swap. Simultaneous with the filing of its Complaint, the United States filed a proposed Final Judgment requiring KeySpan to pay to the United States $12 million as disgorgement of ill-gotten gains. *See Complaint, United States* v. *KeySpan Corp.,* No. 10–1415 (S.D.N.Y. Feb. 22, 2010). After completion of the procedures set forth in the Tunney Act, including public notice and comment, the United States moved for entry of the proposed Final Judgment. In the course of making its public interest determination, the Court found that disgorgement is available to remedy violations of the Sherman Act. *See United States* v. *KeySpan Corp.,* 763 F. Supp. 2d 633, 638–641. The KeySpan Final Judgment was entered on February 2, 2011.

IV. Explanation of the Proposed Final Judgment

The proposed Final Judgment requires Morgan to disgorge profits gained as a result of its unlawful agreement restraining trade. Morgan is to surrender $4.8 million to the Treasury of the United States.

KeySpan, pursuant to a Final Judgment sought by the United States, has surrendered $12 million as a result of its role in the Morgan/KeySpan Swap.[4] *See United States* v. *KeySpan Corp.,* 763 F. Supp. 2d 633, 637–38 (S.D.N.Y. 2011). Securing similar disgorgement from the other responsible party to the anticompetitive agreement will protect the public interest by depriving Morgan of a substantial portion of the fruits of the agreement. The effect of the swap agreement was to effectively combine the economic interests of KeySpan and Astoria, thereby permitting KeySpan to increase prices above competitive rates, and this result could not have been achieved without Morgan's participation in the swap agreement. Requiring disgorgement in these circumstances will thus protect the public interest by deterring Morgan and other parties from entering into similar financial agreements that result in anticompetitive effects in the underlying markets, or from otherwise engaging in similar anticompetitive conduct in the future.

The $4.8 million disgorgement amount is the product of settlement and accounts for litigation risks and costs. While the disgorged sum represents less than all of Morgan's net transaction revenues under the two agreements,[5] disgorgement will effectively fulfill the remedial goals of the Sherman Act to ''prevent and restrain'' antitrust violations as it will send a message of deterrence to those in the financial services community considering the use of derivatives for anticompetitive ends.

V. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Morgan.

VI. Procedures Available for Modification of the Proposed Final Judgment

The United States and the Defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: William H. Stallings, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW.; Suite 8000, Washington, DC 20530.

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

VII. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against the Defendant. The United States is satisfied, however, that the disgorgement of profits is an appropriate remedy in this matter. A disgorgement remedy should deter Morgan and others from engaging in similar conduct and thus achieves a significant portion of the relief the United States would have

[4] Had the *KeySpan* case proceeded to trial, the United States would have sought disgorgement of the approximately $49 million in net revenues that KeySpan received under the Swap, contending that these net revenues reflected the value that KeySpan received from trading the uncertainty of competing for the certainty of the bid-the-cap strategy. *See Plaintiff United States's Response to Public Comments* at 14–18, *United States* v. *KeySpan Corp.,* No. 10–1415 (S.D.N.Y. June 11, 2010).

[5] Had the case against Morgan proceeded to trial, the United States would have sought disgorgement of the $21.6 million in net transaction revenues Morgan earned under both the Morgan/KeySpan Swap and the Morgan/Astoria Hedge. At trial, Morgan—in addition to raising arguments as to its lack of liability in general—would have disputed that the entire $21.6 million earned under both agreements would be cognizable as ill-gotten gains.

obtained through litigation but avoids the time, expense, and uncertainty of discovery and a full trial on the merits of the Complaint.

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

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court is directed to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B); *see generally United States* v. *KeySpan Corp.,* 763 F. Supp. 2d 633, 637–38 (S.D.N.Y. 2011) (WHP) (discussing Tunney Act standards); *United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing standards for public interest determination). In considering these statutory factors, the court's inquiry is necessarily a limited one as the United States 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).

Under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States' complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, the 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.'' *KeySpan,* 763 F. Supp. 2d at 637 (quoting *United States* v. *Alex Brown & Sons, Inc.,* 963 F. Supp. 235, 238 (S.D.N.Y. 1997) (internal quotations omitted). In making this determination, ''[t]he [c]ourt is not permitted to reject the proposed remedies merely because the court believes other remedies are preferable. [Rather], the relevant inquiry is whether there is a factual foundation for the government's decision such that its conclusions regarding the proposed settlement are reasonable.'' *Id.* at 637–38 (quoting *United States* v. *Abitibi–Consolidated Inc.,* 584 F. Supp. 2d 162, 165 (D.D.C. 2008).[6] The government's predictions about the efficacy of its remedies are entitled to deference.[7]

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

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; *KeySpan,* 763 F. Supp. 2d at 638 (''A court must limit its review to the issues in the complaint * * *.''). 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, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding 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). This language effectuates what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[8]

IX. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that the United States considered in formulating the proposed Final Judgment.

Dated: September 30, 2011.

Respectfully submitted,

For Plaintiff
the United States of America.
Jade Alice Eaton,
Trial Attorney, United States Department of Justice, Antitrust Division, Transportation, Energy & Agriculture Section, 450 5th Street, NW., Suite 8000, Washington, DC 20530,

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[6] *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' '').

[7] *Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

[8] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone'').

Telephone: (202) 307–6316, jade.eaton@usdoj.gov.

United States of America, Plaintiff,

v.

Morgan Stanley, Defendant.

Civil Action No.

Final Judgment

Whereas Plaintiff United States of America filed its Complaint alleging that Defendant Morgan Stanley (''Morgan'') violated Section 1 of the Sherman Act, 15 U.S.C. 1, and Plaintiff and Morgan, through their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, for settlement purposes only, and without this Final Judgment constituting any evidence against or an admission by Morgan for any purpose with respect to any claim or allegation contained in the Complaint:

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby *Ordered, Adjudged, and Decreed:*

I. Jurisdiction

This Court has jurisdiction of the subject matter herein and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted to the United States against Morgan under Sections 1 and 4 of the Sherman Act, 15 U.S.C. 1 and 4.

II. Applicability

This Final Judgment applies to Morgan and each of its successors, assigns, and to all other persons in active concert or participation with it who shall have received actual notice of the Settlement Agreement and Order by personal service or otherwise.

III. Relief

A. Within thirty (30) days of the entry of this Final Judgment, Morgan shall pay to the United States the sum of four million eight hundred thousand dollars ($4,800,000.00).

B. The payment specified above shall be made by wire transfer. Before making the transfer, Morgan shall contact Janie Ingalls, of the Antitrust Division's Antitrust Documents Group, at (202) 514–2481 for wire transfer instructions.

C. In the event of a default in payment, interest at the rate of eighteen (18) percent per annum shall accrue thereon from the date of default to the date of payment.

IV. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions. Upon notification by the United States to the Court of Morgan's payment of the funds required by Section III above, this Section IV will have no further force or effect.

V. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and Plaintiff's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Dated: ____________________________

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United States District Judge.

[FR Doc. 2011–26161 Filed 10–7–11; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting and Hearing Notice No. 10–11]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

Monday, October 17, 2011: 10:30 a.m.—Issuance of Proposed Decisions in claims against Libya; 3 p.m.—Oral hearings on objections to Commission's Proposed Decisions in Claim Nos.LIB–II–128, LIB–II–129, LIB–II–130 and LIB–II–131.

Status: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Judith H. Lock, Executive Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Suite 6002, Washington, DC 20579. *Telephone:* (202) 616–6975.

Jaleh F. Barrett,

Chief Counsel.

[FR Doc. 2011–26305 Filed 10–6–11; 4:15 pm]

BILLING CODE 4410–BA–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

DATES: *Time and Date:* 8 a.m. to 4:30 p.m. on Wednesday, November 2, 2011, 8 a.m. to 4:30 p.m. on Thursday, November 28, 2011.

PLACE: National Corrections Academy, 11900 East Cornell Avenue, Aurora, CO 80014, 1 (303) 338–6600.

MATTERS TO BE CONSIDERED: Important trends in corrections-related policy, program, and practices; identifying and meeting the needs of the field of corrections; Performance Based Outcomes; Director's report; Federal Partners Reports; Presentations.

CONTACT PERSON FOR MORE INFORMATION: Thomas Beauclair, Deputy Director, 202–307–3106, ext. 44254.

Morris L. Thigpen,

Director.

[FR Doc. 2011–25880 Filed 10–7–11; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0018]

Curtis-Straus LLC; Application for Renewal of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of Curtis-Straus LLC for renewal of its recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the Agency's preliminary finding to deny this application for renewal of NRTL recognition.

DATES: Submit information or comments, or a request to extend the comment period, on or before November 10, 2011. All submissions must bear a postmark or provide other evidence of the submission date.