that adverse antitrust consequences will result—perhaps akin to the confidence that would justify a court in overturning the predictive judgments of an administrative agency.'' *Microsoft,* 56 F.3d at 1460 (quoting *Western Elec.*, 993 F.2d at 1577). Congress did not intend the Tunney Act to lead to protracted hearings on the merits, and thereby undermine the incentives for defendants and the Government to enter into consent judgments. S. Rep. No. 298, 93d Cong. 1st Sess. 3 (1973).

Tunney Act review is confined to the terms of the proposed decree and their adequacy as remedies for the violations alleged in the Complaint. *Microsoft,* 56 F.3d at 1459. The Tunney Act does not contemplate evaluating evaluating the wisdom or adequacy of the Government's Complaint or considering what relief might be appropriate for violations that the United States has not alleged. *Id.* Nor does it contemplate inquiring into the Government's exercise of prosecutorial discretion in deciding whether to make certain allegations. Consequently, a district court exceeds its authority if it requires production of information concerning ''the conclusions reached by the Government'' with respect to the particular practices investigated but not charged in the Complaint, and the areas addressed in settlement discussions, including ''what, if any areas were bargained away and the reasons for their non-inclusion in the decree.'' *Id.* at 1455, 1459. To the extent that comments raise issues not charged in the Complaint, those comments are irrelevant to the Court's review. *Id.* at 1460. The Court's inquiry here is simply whether the accreditation process set in place by the proposed decree will cure the taint of self-interest that, the Complaint alleges, had infected the process.

In addition, no third party has a right to demand that the Government's proposed decree be rejected or modified simply because a different decree would better serve its private interests in obtaining accreditation or being awarded damages. For, as this Circuit has emphasized, unless the ''decree will result in positive injury to third parties,'' a district court ''should not reject an otherwise adequate remedy simply because a third party claims it could be better treated.'' *Microsoft,* 56 F.3d at 1461 n.9.[3] The United States—not a third party—represents the public interest in Government antitrust cases. *See, e.g., Bechtel Corp.*, 648 F.2d at 660, 666; *United States* v. *Associated Milk Producers* 534 F.2d 113, 117 (8th Cir.), *cert. denied,* 429 U.S. 940 (1976). The decree is intended to set in place a fair process that will produce fair results for those seeking accreditation. It is not designed to transfer to the Department the process of accreditation itself and require the Department to determine who should or should not be accredited.

Moreover, comments that challenge the validity of the Government's case and assert that it should not have been brought are beyond the scope of this Tunney Act proceeding. It is not the function of the Tunney proceeding ''to make [a] de novo determination of facts and issues'' but rather ''to determine whether the Department of Justice's explanations were reasonable under the circumstances'' for ''[t]he balancing of competing social and political interests affected by a proposed antitrust decree must be left, in the first instance, to the discretion of the Attorney General.'' *Western Elec.*, 993 F.2d at 1577 (internal quotations omitted). Courts have consistently refused to consider ''contentions going to the merits of the underlying claims and defenses.'' *Bechtel,* 648 F.2d at 666.

B. Special Commission

Finally, the fact that the consent decree includes a condition that will occur after its entry is not a bar to its entry now. Many courts have approved consent decrees requiring defendants, after entry of the decree, to take actions that must be approved by the Government or the court. For example, courts have entered consent decrees with provisions requiring defendants to divest assets within a certain time period after entry of the decree to a company approved by the Government and requiring the court to oversee divestiture by a trustee if the defendant did not meet the divestiture deadline. In *United States* v. *Browning-Ferris Industries,* 1995–2 Trade Cas. (CCH) ¶ 71,079 (D.D.C. 1995) (Richey, J.), this Court entered a decree requiring the defendant to divest assets within 90 days after entry, unless the Government agreed to a partial divestiture. The decree gave the Government authority to determine whether the buyer was a viable competitor. Moreover, if Browning-Ferris did not meet the 90-day deadline, the Court would appoint a trustee whose activities the Court would oversee. *Id.* at pp. 75,166–67. Several courts have entered very similar decrees. *E.g., United States* v. *Baroid Corp.*, 1994–1 Trade Cas. (CCH) ¶ 70,752 (D.D.C. 1994); *United States* v. *Outdoor Systems, Inc.*, 1994–2 Trade Cas. (CCH) ¶ 70,807 (N.D. Ga. 1994); *United States* v. *Society Corp.*, 1992–2 Trade Cas. (CCH) ¶ 68,239 (N.D. Ohio 1992) (similar decree provisions); *United States* v. *General Adjustment Bureau, Inc.*, 1971 Trade Cas. (CCH) ¶ 73,509 (S.D.N.Y. 1971); *United States* v. *Mid-America Dairymen*, 1977–1 Trade Cas. (CCH) ¶ 61,509 (W.D. Mo. 1977) (mandating divestiture within two years after entry and allowing Government to object to proposed sale in court).

Other decrees have included conditions that must be implemented after their entry. In *United States* v. *Baker Commodities, Inc.*, 1974–1 Trade Cas. (CCH) ¶ 74,929 (C.D. Cal. 1974), the district court entered a decree requiring each consenting defendant, within 90 days after entry, to independently re-establish its prices and to file with the court and the United States an affidavit stating that they have complied. Moreover, within two years after entry, defendant Baker was required to divest certain interests to a person approved by the Government or the Court upon a proper showing by Baker. *Id.* at pp. 96,160–61. Finally, if the Government objected to certain future acquisitions, then the court would decide the matter, with Baker having to show that the acquisition would not substantially lessen competition. *Id.* This is akin to the hearing that could ensue here if the Government challenged the Special Commission's revisions as antitrust violations.[4]

In other cases, decrees have required defendants, after entry of the decree, to eliminate from their bylaws or codes any sections that are inconsistent with the decree. *E.g., United States* v. *American Inst. of Architects,* 1990–2 Trade Cas. (CCH) ¶ 69,256 (D.D.C. 1990) (Richey, J.); *United States* v. *Hawaii Island Contractors' Ass'n,* 1988–1 Trade Cas. (CCH) ¶ 68,021 (D. Hawaii 1988); *United States* v. *Society of Authors' Reps.*, 1982–83 Trade Cas. (CCH) ¶ 65,210 (S.D.N.Y. 1982). In addition, defendants have been ordered to independently re-establish their prices after the decree is entered and to file statements with the Government

[3] *Cf. United States* v. *Associated Milk Producers, Inc.*, 534 F.2d 113, 116 n.3 (8th Cir.) (''The cases unanimously hold that a private litigant's desire for [the] *prima facie* effect [of a litigated government judgment] is not an interest entitling a private litigant to intervene in a government antitrust case.''), *cert. denied*, 429 U.S. 940 (1976).

[4] *See also United States* v. *Primestar Partners, L.P.*, 1994–1 Trade Cas. (CCH) ¶ 70,562 (S.D.N.Y. 1994) (decree prohibited defendant, after entry, from taking programming actions without prior Government approval); *United States* v. *Pilkington PLC*, 1994–2 Trade Cas. (CCH) ¶ 70,842 (D. Ariz. 1994) (defendants forbidden after entry to assert certain patent claims except upon proper showing to Government); *United States* v. *Industrial Electronic Engineers*, 1977–2 Trade Cas. (CCH) ¶ 61,734 (C.D. Cal. 1977) (decree required defendant, within 90 days after entry, to write a policy statement approved by Government).