

Aaron D. Hoag, Esq., Attorney, U.S. Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 4000, Washington, DC 20530, Telephone: (202) 514-5038, Fax: (202) 514-7308, E-mail: aaron.hoag@usdoj.gov.

#### Footnotes

1. After their initial sale, concert tickets may be resold on the secondary ticketing market. *Ticket brokers* purchase tickets with the intention of reselling them to concertgoers. *Secondary ticketing companies* provide services that facilitate the resale of tickets to concertgoers by ticket brokers and others.

2. While the conclusions reached in the antitrust analysis described below are not sensitive to the precise number of venues included within this class, for purposes of this Competitive Impact Statement, "major concert venues" are the 500 U.S. venues generating the greatest concert revenues in 2008, as reported in Pollstar, a leading source of concert industry information. Concert ticket revenues from events at these venues represent more than 90% of the concert ticket revenues at all venues reported in Pollstar. Major concert venues are a diverse group, which includes large stadiums and arenas with relatively few concerts (e.g., the Verizon Center in Washington, DC), mid-sized amphitheaters that host concerts regularly during certain seasons (e.g., Nissan Pavilion in Bristow, VA), and smaller clubs and theaters with frequent concerts throughout the year (e.g., Warner Theatre in Washington, DC and Live Nation's House of Blues clubs). To account for this diversity, venues are weighted by their capacity in calculating shares of the market for primary ticketing services to major concert venues. Only public sources of information were used to calculate the market shares described in this Competitive Impact Statement.

3. In this case, there are not significant transportation costs associated with the relevant services, so sellers' locations do little to inform the market-definition inquiry, though they are not irrelevant to antitrust analysis. To the contrary, only sellers capable of serving major concert venues located in the United States can compete with Defendants in the relevant market. Many of those sellers are located within the United States, but some are foreign firms, as suggested by Live Nation's adaptation of a European primary ticketing platform for use in the United States, which is discussed below. Foreign sellers historically have not competed effectively in the United States because of the significant

investments required to enter the domestic market. Still, Live Nation's example suggests that, with a significant investment of time and money, foreign primary ticketing companies might be capable of adapting their products for U.S. customers.

4. Before 2009, by virtue of its position as a promoter, Live Nation received roughly 10% of the tickets to concerts it promoted, and it sold those tickets to concertgoers through its MusicToday subsidiary and a platform licensed from eTix. Live Nation also used the MusicToday platform to provide primary ticketing services to a few small venues.

5. The 2004 amendments substituted "shall" for "may" in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), with 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

6. *Cf. BNS*, 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *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. *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"); *United States v. Mid-Am. Dairymen, Inc.*, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93-298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral

arguments, that is the approach that should be utilized.").

8. The United States redacted competitively sensitive information and information unrelated to U.S. markets from the version of the AEG/TM Technology Agreement attached as Exhibit A.

[FR Doc. 2010-2754 Filed 2-9-10; 8:45 am]

BILLING CODE 4410-11-P

---

## MERIT SYSTEMS PROTECTION BOARD

**The Merit Systems Protection Board (MSPB) is Providing Notice of the Opportunity to File Amicus Briefs in the Matters of *Conyers v. Department of Defense*, Docket No. CH-0752-09-0925-I-1, and *Northover v. Department of Defense*, Docket No. AT-0752-10-0184-I-1**

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Notice.

---

**SUMMARY:** On January 25, 2010, the MSPB published in the **Federal Register** (see 75 FR 3939) a Notice of the opportunity to file amicus briefs in the matter of *Crumpler v. Department of Defense*, MSPB Docket Number DC-0752-09-0033-R-1, 2009 MSPB 233. Although the *Crumpler* case is now settled, the legal issue raised in that matter and noted in the January 25 **Federal Register** notice remains unresolved. The cases of *Conyers v. Department of Defense*, Docket No. CH-0752-09-0925-I-1, and *Northover v. Department of Defense*, Docket No. AT-0752-10-0184-I-1, involve the same legal issue.

*Conyers* and *Northover* raise the question of whether, pursuant to 5 CFR Part 732, National Security Position, the rule in *Department of the Navy v. Egan*, 484 U.S. 518, 530-31 (1988), limiting the scope of MSPB review of an adverse action based on the revocation of a security clearance also applies to an adverse action involving an employee in a "non-critical sensitive" position due to the employee having been denied continued eligibility for employment in a sensitive position.

Interested parties may submit amicus briefs or other comments on this issue no later than March 1, 2010. Amicus briefs must be filed with the Clerk of the Board. Briefs shall not exceed 15 pages in length. The text shall be double-spaced, except for quotations and footnotes, and the briefs shall be on 8½; by 11 inch paper with one inch margins on all four sides.

**DATES:** All briefs submitted in response to this notice shall be filed with the Clerk of the Board on or before March 1, 2010.

**ADDRESSES:** All briefs shall be entitled "Amicus Brief, *Conyers and Northover*." Only one copy of the brief need be submitted. Briefs must be filed with the Office of the Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419.

**FOR FURTHER INFORMATION CONTACT:** Matthew Shannon, Deputy Clerk of the Board, (202) 653-7200.

Dated: February 4, 2010.

**William D. Spencer,**

*Clerk of the Board.*

[FR Doc. 2010-2890 Filed 2-9-10; 8:45 am]

**BILLING CODE 7400-01-P**

---

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Senior Executive Service (SES) Performance Review Board; Members

**AGENCY:** National Archives and Records Administration.

**ACTION:** Notice; SES Performance Review Board.

**SUMMARY:** Notice is hereby given of the appointment of members of the National Archives and Records Administration (NARA) Performance Review Board.

**DATES:** *Effective Date:* This appointment is effective on February 10, 2010.

**FOR FURTHER INFORMATION CONTACT:** Pamela S. Pope, Human Resources Services Division (NAH), National Archives and Records Administration, 9700 Page Avenue, St. Louis, MO 63132, (314) 801-0882.

**SUPPLEMENTARY INFORMATION:** Section 4314(c) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review the initial appraisal of a senior executive's performance by the supervisor and recommend final action to the appointing authority regarding matters related to senior executive performance.

The members of the Performance Review Board for the National Archives and Records Administration are: Adrienne C. Thomas, Deputy Archivist of the United States, Michael J. Kurtz, Assistant Archivist for Records Services—Washington, DC, and Martha A. Morphy, Assistant Archivist for Information Services. These appointments supersede all previous appointments.

Dated: February 4, 2010.

**David S. Ferriero,**

*Archivist of the United States.*

[FR Doc. 2010-2935 Filed 2-9-10; 8:45 am]

**BILLING CODE 7515-01-P**

---

## THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Meeting of National Council on the Humanities

**AGENCY:** The National Endowment for the Humanities.

**ACTION:** Notice of meeting.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended) notice is hereby given that the National Council on the Humanities will meet in Washington, DC on February 25-26, 2010.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support from and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on February 25-26, 2010, will not be open to the public pursuant to subsections (c)(4), (c)(6) and (c)(9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the sessions on February 25, 2010 will be as follows:

#### Committee Meetings

*(Open to the Public)*

Policy Discussion

9-10:30 a.m.

Digital Humanities—Room M-07  
Education Programs and Federal/State Partnership—Room 510A  
Preservation and Access—Room 415

Public Programs—Room 421  
Research Programs—Room 315

*(Closed to the Public)*

Discussion of Specific Grant Applications and Programs Before the Council

10:30 a.m. until Adjourned  
Digital Humanities—Room M-07  
Education Programs and Federal/State Partnership—Room 510A

Preservation and Access—Room 415  
Public Programs—Room 421  
Research Programs—Room 315

The morning session of the meeting on February 26, 2010 will convene at 9 a.m., in the first floor Council Room M-09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

A. Minutes of the Previous Meeting

B. Reports

1. Introductory Remarks
2. Staff Report
3. Congressional Report
4. Budget Report
5. Presentation on NEH-supported Project about the Trans-Atlantic Slave Trade Database
6. Reports on Policy and General Matters
  - a. Digital Humanities
  - b. Education Programs
  - c. Federal/State Partnership
  - d. Preservation and Access
  - e. Public Programs
  - f. Research Programs

The remainder of the proposed meeting will be given to the consideration of specific applications and will be closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or by calling (202) 606-8322, TDD (202) 606-8282. Advance notice of any special needs or accommodations is appreciated.

**Michael P. McDonald,**

*Advisory Committee, Management Officer.*

[FR Doc. 2010-2836 Filed 2-9-10; 8:45 am]

**BILLING CODE 7536-01-P**

---

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Meetings of Humanities Panel

**AGENCY:** The National Endowment for the Humanities.

**ACTION:** Notice of meetings.

---