UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. LUCASFILM, INC., Defendant.	Civil Action No. 10-02220 (RBW)

ORDER

The United States, the plaintiff in this civil case, filed its complaint on December 21, 2010, alleging that defendant Lucasfilm Ltd. ("Lucasfilm") entered into an anticompetitive agreement with its direct competitor Pixar to "restrain competition between them for highly skilled digital animators." Complaint ("Compl.") ¶ 1. Currently before the Court is the plaintiff's motion to enter a final judgment pursuant to the Tunney Act, 15 U.S.C. § 16 (2006).

The alleged anticompetitive agreement had three components: "(1) that [Lucasfilm and Pixar ("the firms")] not cold call each other's employees; (2) that the firms notify each other when making an offer to an employee of the other firm; and (3) that the firm making the offer to the other firm's employee not counteroffer above its original offer." Compl. ¶ 16. The United States claims this is a per se violation of Section One of the Sherman Act, 15 U.S.C. § 1 (2006), because it "eliminated significant forms of competition to attract digital animators and, overall, substantially diminished competition to the detriment of affected employees who likely were deprived of competitively important information and access to better job opportunities." Id. ¶¶ 2-3.

The United States now requests that the Court enter the Proposed Final Judgment to remedy the anticompetitive agreement and prevent similar agreements in the future. Specifically, the Proposed Final Judgment would enjoin the defendant from entering into an agreement with any other person or company to in any way refrain from recruiting the other person or company's employees. Proposed Final Judgment ("Prop. Final J.") at 4. It would also require that the companies' officers and their successors be educated on the requirements of the Proposed Final Judgment and disclose any violations of which they are aware. Id. at 6-7. Finally, the defendant would be required to annually report compliance with the Final Judgment. Id. at 8. The defendant has agreed to entry of the Proposed Final Judgment without further notice to any party or other proceedings. United State's Motion and Supporting Memorandum to Enter Final Judgment ("Pl's Mot.") at 1. After carefully considering all of the relevant submissions by the parties, the Court concludes for the following reasons that the plaintiff's motion should be granted and the Proposed Final Judgment should be entered in this case.[1]

In civil antitrust cases, the Tunney Act permits the United States to propose and courts to enter final judgments resolving and preventing anticompetitive behavior. 15 U.S.C. § 16 (2006). Before a proposed final judgment may be certified, the United States must first satisfy the Act's threshold notice requirements: the proposed final judgment must be published in the Federal Register, a Competitive Impact Statement detailing the allegedly anticompetitive behavior and the government's proposed remedy must also be published in the Federal Register, summaries of both of these documents must be published for seven consecutive days in a local newspaper, and during a sixty day window following publication the United States must accept and respond to public comments. 15 U.S.C. § 16(b)-(d). After the Act's threshold requirements are satisfied,

[1] In deciding the motion, the court also considered the following filings: the plaintiff's Complaint; the plaintiff's Tunney Act Notice; the plaintiff's Response to Public Comments; the plaintiff's Competitive Impact Statement; and, the plaintiff's Motion and Supporting Memorandum to Enter Final Judgment.

the Court must then determine whether entering the final judgment would be in the public interest. 15 U.S.C. § 16(e). A court must consider two factors when determining whether a proposed final judgment is in the public interest:

> (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
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> (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). The review of a proposed final judgment is highly deferential; thus, approval should be withheld "'only if any of the terms appear ambiguous, if the enforcement mechanism is inadequate, if third parties will be positively injured, or if the decree otherwise makes a mockery of judicial power.'" Massachusetts v. Microsoft Corp., 373 F.3d 1199, 1237 (D.C. Cir. 2004) (quoting Mass. Sch. Of Law at Andover, Inc. v. U.S., 118 F.3d 776, 783 (D.C. Cir. 1997)) (internal quotation marks omitted). Moreover, the Tunney Act does not require a hearing as to whether a final judgment is in the public interest. U.S. v. Airline Tariff Pub. Co., 836 F. Supp. 9, 11 (D.D.C. 1993). However, the proposed final judgment must remedy only the anticompetitive behavior alleged in the complaint, and is not required to go beyond that. United States v. Microsoft Corp., 56 F.3d 1448, 1459 (D.C. Cir. 1995). Finally, "the court's function is not to determine whether the resulting array of rights and liabilities 'is the one that will best serve society,' but only to confirm that the resulting 'settlement is within the reaches of the public interest.'" United States v. Western Electric Co., 900 F.2d 283, 309 (D.C. Cir. 1990) (quoting United States v. Bechtel Corp., 648 F.2d 660, 666 (9th Cir. 1990) (internal quotations omitted)).

Upon its review of the record in this case, the Court finds that the United States has satisfied each of the Tunney Act's threshold requirements. Specifically, on December 21, 2010, the United States filed both the Proposed Final Judgment and the Competitive Impact Statement with the Court. Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act ("Cert. of Compliance") at 2. On December 28, 2010, the United States published both documents in the Federal Register, United States v. Lucasfilm, 75 Fed. Reg. 81651, and, beginning on December 25, 2010, the United States published the Proposed Final Judgment in The Washington Post for seven consecutive days. Cert. of Compl. at 2-3. Sixty days were then allowed for public comment on the Proposed Final Judgment, and the United States responded to the three public comments it received. Id. at 3, Response to Public Comments ("Resp. to Pub. Comm.") at 8-12.

Additionally, the Court concludes that the Final Judgment proposed is in the public interest. The terms of the proposed Final Judgment unambiguously terminate the anticompetitive behavior that gave rise to the Complaint that has been filed in this case by the United States. The prohibited conduct is clearly delineated in the Proposed Final Judgment, as are the narrow contract-based exceptions to the Judgment's prohibition against nonsolicitation agreements. Prop. Final J. at 3-4. The Court finds that the compliance inspections and interrogatories required by the Judgment, in addition to the mandatory annual statement the defendant must submit for five years certifying its compliance with the Final Judgment, will be an effective enforcement mechanism. Id. at 8-9. Moreover, the Court will retain jurisdiction to modify, enforce, or punish violations of the Final Judgment, which will ensure compliance with the Proposed Final Judgment, id. at 10, and it will be enforceable through civil and criminal contempt proceedings, Resp. to Pub. Comm. at 8. Because the Proposed Final Judgment

prohibits the nonsolicitation agreements that resulted in the economic and employment-based injuries to the defendant's digital animators, no positive third-party injuries are likely to result from entering the Proposed Final Judgment. Prop. Final J. at 4. Nor is the Proposed Final Judgment excessively broad so as to curtail legitimate competitive nonsolicitation. Id. at 4-6. Finally, the Proposed Final Judgment is a reasonable response to the anticompetitive agreement and is appropriate in scope, thus, certification of the Judgment would in no way make a mockery of judicial authority.

Accordingly, it is hereby

ORDERED that the plaintiff's motion to enter final judgment is **GRANTED**. It is further

ORDERED that the Proposed Final Judgment is **ENTERED**. Finally, it is further

ORDERED that this case be **CLOSED**, subject to the government moving to reopen the case in the event of the defendant's noncompliance with the terms of what is now the Final Judgment.

SO ORDERED this 3rd day of June, 2011.

REGGIE B. WALTON
United States District Judge