



Department of Justice

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GROCERY STORE CHAIN TO PAY \$3 MILLION IN ANTITRUST CASE

The Department of Justice today filed, at the request of the Federal Trade Commission, a civil suit charging Tengelmänn Warenhandels-gesellschaft of West Germany, and The Great Atlantic & Pacific Tea Company Inc. (A & P) of Montvale, New Jersey, with violating the premerger notification requirements of the Hart-Scott-Rodino Act. Tengelmänn Warenhandels-gesellschaft owns a controlling interest in A & P.

The Department also filed a proposed consent decree that, if approved by the court, would terminate the suit. The complaint and proposed consent decree were filed in U.S. District Court in the District of Columbia.

The Hart-Scott-Rodino Act imposes notification and waiting period requirements on individuals and companies over a certain size that contemplate mergers or stock or asset acquisitions over a certain value. The Act is intended to improve antitrust enforcement by ensuring that the government receives advance notice of significant mergers and similar transactions.

The complaint alleges that the defendants violated the Act in connection with the acquisition by A & P on November 26, 1986, of more than \$15 million worth of voting securities of Waldbaum Inc.

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of Central Islip, New York. Waldbaum operates retail food stores in the states of New York, Connecticut and Massachusetts.

The complaint alleges that the defendants failed to comply with the reporting and waiting period requirements of the Act from November 26, 1986, through November 18, 1988.

The complaint also alleges that the defendants' acquisition of Waldbaum Inc. was structured through a general partnership that was created for the purpose of avoiding the obligation to comply with the Hart-Scott-Rodino Act. However, the substance of the transaction was, in reality, an acquisition by defendants of Waldbaum Inc., in violation of the Act, according to the complaint.

Under the terms of the proposed consent decree, A & P has agreed to pay a civil penalty of three million dollars.

In announcing the suit, Michael Boudin, Acting Assistant Attorney General in charge of the Antitrust Division, said, "The Antitrust Division and the Federal Trade Commission share a strong commitment to ensure that merging companies comply with the Hart-Scott-Rodino notification requirements, and we will continue to bring civil penalty actions for violations of the Act."

Under Section (g)(1) of the Act, any person or company that fails to comply with the Act's requirements is liable for a civil penalty of up to \$10,000 for each day the violation continues.

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