

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
<i>Plaintiff,</i>)	
)	
)	Civil No.: 99-2943 (TFH)
)	
v.)	
)	
ALCOA INC., ACX TECHNOLOGIES,)	Filed: APR 13
INC., and GOLDEN ALUMINUM)	
COMPANY,)	
<i>Defendants.</i>)	
)	

PLAINTIFF’S MOTION FOR ENTRY OF FINAL JUDGMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (“Tunney Act”), Plaintiff United States moves for entry of the proposed Final Judgment filed in this civil antitrust proceeding. The proposed Final Judgment may be entered at this time without further hearing if the Court determines that entry is in the public interest. The Competitive Impact Statement filed in this matter on December 6, 1999, explains why entry of the proposed Final Judgment would be in the public interest. A Certificate of Compliance setting forth the steps taken by the parties to comply with all applicable provisions of the Tunney Act and certifying that the statutory waiting period has expired has been filed simultaneously with this Motion.

I.

Background

On November 5, 1999 the United States filed a civil antitrust Complaint alleging that the proposed acquisition by Alcoa Inc. (“Alcoa”) of ACX Technologies, Inc.’s (“ACX”) interest in Golden Aluminum Company (“Golden”) would violate Section 7 of the Clayton Act, 15 U.S.C.

§ 18. The Complaint alleges that the transaction would result in Alcoa increasing its already dominant share of the aluminum food and beverage can lid stock (“lid stock”) production business in North America. Alcoa is the largest producer of lid stock in North America. Golden is a small, but low cost producer of lid stock. They compete to produce and sell the best quality lid stock at the lowest prices, and to provide the best technological, marketing, and customer support services. Alcoa and ACX have proposed a transaction that would eliminate this competition, further increase concentration in the already highly concentrated lid stock business, and further increase the market power of the dominant firm -- Alcoa. The proposed transaction would make it more likely that the few remaining lid stock producers would engage in anticompetitive coordination to increase prices, reduce quality, and decrease production of lid stock, in violation of Section 7 of the Clayton Act.

The Plaintiff also filed a proposed Final Judgment and Stipulation simultaneously with the Complaint. The proposed Final Judgment orders Alcoa to divest Golden’s Fort Lupton Assets (as defined in the Final Judgment) to a purchaser who can effectively compete in the manufacture and sale of lid stock. The proposed Final Judgment also provides that if Alcoa fails to divest the facilities within a specified divestiture period, a trustee could be appointed by the Court, upon Plaintiff’s application. Prior to implementing the divestitures set out in the proposed Final Judgment, Alcoa also was ordered

to maintain the assets to be divested as a viable, ongoing business.¹

The Plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the Tunney Act. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II.

Compliance with the APPA

The Tunney Act requires a sixty-day period for the submission of public comments on the proposed Final Judgment. 15 U.S.C. § 16(b). In this case, the comment period terminated on February 29, 1999, and the United States has not received any comments during this period on the proposed Final Judgment. The United States has filed a Certificate of Compliance simultaneously with this Motion that states all the requirements of the Tunney Act have been satisfied. It is now appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the Final Judgment.

III.

Standard of Judicial Review

Before entering the proposed Final Judgment, the Court is to determine whether the Judgment “is in the public interest.” 15 U.S.C. § 16(e). In making that determination, the Court may consider:

- (1) the competitive impact of such judgment, including termination of

¹Alcoa has divested the assets as required by the proposed Final Judgment.

alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment 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).

In its Competitive Impact Statement previously filed with the Court on December 6, 1999, the United States has explained the meaning and proper application of the public interest standard under the Tunney Act and incorporates those statements here by reference.

IV.

Conclusion

For the reasons set forth in this Motion and in the Competitive Impact Statement, the Court should find that the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment without further hearings. The proposed Final Judgment will remedy the anticompetitive effects of the challenged transaction by requiring the divestiture of the Fort Lupton Assets. Therefore, the United States respectfully requests that the proposed Final Judgment annexed hereto be entered as soon as possible.

Defendants have informed Plaintiff that defendants consent to the entry of the Final Judgment in this matter.

Respectfully submitted,

“/s/”

Laura M. Scott
Virginia Bar No. # 36587
U.S. Department of Justice
Antitrust Division
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Dated: April 13, 2000

Certificate of Service

I, Doris B. Neal, hereby certify that, on April 13, 2000 I caused the foregoing document to be served on defendants Alcoa Inc., ACX Technologies, Inc., and Golden Aluminum Company by having a copy mailed, first-class, postage prepaid, to:

W. Randolph Smith, Esquire
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2595

W. Todd Miller, Esquire
Baker & Miller
915 15th Street, N.W. Suite 1000
Washington, DC 20005-2302

_____/s/
Doris B. Neal