UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	:	
	:	
v.	:	Civil Action No. 99-2927 (JR)
	:	
FIAT S.p.A., *et al.*,	:	
	:	
Defendants.	:	

FILED

MAR 17 2000

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

MEMORANDUM

Before the Court for the public interest determination required by the Tunney Act is a proposed final judgment giving effect to the terms of an antitrust consent decree between and among the United States Government, Fiat S.p.A. ("Fiat"), Fiat Acquisition Corporation ("Fiat Acquisition"), New Holland, N.V. and New Holland North America, Inc. ("New Holland") and Case Corporation ("Case"). It appears, upon examination in light of the violations charged in the complaint, that the terms of the decree are not ambiguous, that the proposed enforcement mechanism is adequate, that third parties will not be "positively injured," and that the decree does not make a mockery of judicial power. The final judgment is accordingly approved.

Facts

Fiat and Case, two of only five manufacturers of four-wheel-drive ("4WD") and large two-wheel-drive ("2WD") tractors in the United States and Canada, entered into an agreement whereby

Fiat and its subsidiaries would acquire Case. If the proposed acquisition were permitted, Fiat and one other competitor would control about 80 percent of the 4WD tractor market and about 90 percent of the large 2WD tractor market in the United States and Canada. In addition, the acquisition would eliminate head-to-head competition between Fiat and Case, and would increase the likelihood that the remaining dominant firms in these markets will tacitly collude in a non-competitive manner, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18 (1994). Complaint at 2-3.

The consent decree proposed by the parties permits Fiat and its subsidiaries to acquire Case, but resolves the government's antitrust objections by, among other things, requiring the defendants to do the following: (1) sell New Holland's Genesis line of 2WD tractors; (2) sell New Holland's Versatile line of 4WD tractors and its line of tracked tractors that is currently in development; and (3) sell Case's ownership interest in Hay and Forage Industries, a joint venture that makes hay and forage equipment. The proposed final judgment requires that the purchaser of the divested assets continue to operate them in the manufacture and distribution of 4WD and large 2WD tractors and hay tools.

The consent decree further provides that defendants must accomplish the divestitures within 150 calender days after

the filing of the complaint, or within five days after notice of entry of the consent decree, whichever is later, to purchasers acceptable to the government. If defendants do not do so within the time specified in the consent decree, a trustee appointed by the Court would be empowered for an additional six months to sell those assets.

The parties have scrupulously adhered to the "sunshine" requirements of the Tunney Act, codified as 15 U.S.C. § 16 (a)-(i)(1994). The proposed final judgment was duly published in the Federal Register. See 64 Fed. Reg. 68377-87. The government received two written comments on the proposed settlement. These comments, along with the government's responses, were published in the Federal Register. See 65 Fed. Reg. 10,109-11.

Before the consent decree can be finalized by entry of a final judgment, however, the Tunney Act requires that it must be found to be in the public interest.

Analysis

The Tunney Act provides that, when making the required public interest determination, the court may consider:

> (1) the competitive impact of such judgment, including termination of the 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)(1)-(2).

The requirement of a public interest determination was added to the Tunney Act in 1974 by amendments enacted in part to remedy the practice of "judicial rubber stamping" of proposals submitted by the Justice Department.[1] Appellate decisions issued since 1974, however, have made it clear that the public interest inquiry authorized by the Tunney Act is so limited in scope as to be very nearly a ministerial task. "Public interest" is to be defined in accordance with antitrust laws. United States v. AT&T, 552 F. Supp. 131, 149 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983). Settlements that fall "within the reaches of the public interest" should be approved. United States v. Western Electric Co., 900 F.2d 283, 309 (D.C. Cir. 1990)(emphasis in original)(citing and quoting United States v. Bechtel Corp., 648 F.2d 660, 666 (9th Cir. 1981), in turn quoting United States v. Gillette Co., 406 F. Supp. 713, 716 (D. Mass. 1975)). The court is not to review allegations and issues that were not contained in the government's complaint, United States v. Microsoft Corp., 56 F.3d

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[1] See H.R. Rep. No. 93-1463, at 8-9, 12 (1974).

1448, 1459 (D.C. Cir. 1995), or base its public interest determination on antitrust concerns in markets other than those alleged in the government's complaint, United States v. BNS Inc., 858 F.2d 456, 462-63 (9th Cir. 1988).

The role that remains for a district court is to "examine the decree in light of the violations charged in the complaint and . . . withhold approval only [a] if the terms appear ambiguous, [b] if the enforcement mechanism is inadequate, [c] if third parties will be positively injured, or [d] if the decree otherwise makes 'a mockery of judicial power.'" Massachusetts School of Law at Andover, Inc. v. United States, 118 F.3d 776, 783 (D.C. Cir. 1997)(quoting Microsoft at 1462)(emphasis added).

a. Clarity or ambiguity of the decree

The proposed final judgment sets forth specific and precise remedies for the antitrust concerns identified in the government's complaint. It requires the divestiture of Hay and Forage Assets, 2WD Assets and 4WD Assets. Final J. at 6. It specifies what must be divested, and when. The final judgment is not ambiguous.

b. Adequacy of the enforcement mechanism

The proposed final judgment ensures that the Court will have the jurisdiction and "power to ensure that the parties comply in full with the principles mandated by the decree . . .

in their conduct after divestiture." AT&T, 552 F. Supp. at 214. Its compliance mechanisms are adequate.

c. Impact upon third parties

The complaint identifies consumers in the approximately $1.5 billion tractor markets and the approximately $250 million small square baler, large square baler and self-propelled widrower markets, as parties likely to suffer antitrust injury from the lessening of competition if these acquisition were allowed without conditions. Complaint at 2. By requiring divestiture to companies that will be viable competitors, the final judgment will ensure that such injury does not occur.

The government received two written comments on the proposed settlement: (1) from Mark Zeltwanger of Wyatt Farm Center, on December 27, 1999; and (2) from August P. Hau of Hau Nutrition Service, on November 30, 1999.

Mr. Zeltwanger expressed concern that the proposed final judgment will result in the elimination of the New Holland tractor lines as a competitive alternative in the marketplace. As the government points out in its response, however, the proposed final judgment requires that the New Holland tractor lines be sold to another company (or companies) with the capability and will to provide substantial competition in the tractor markets.

Mr. Hau expressed concern that Fiat's acquisition of Case will harm consumers of farm equipment. In its response, the government agrees with this concern, but maintains that the divestiture required by the proposed final judgment will adequately address Mr. Hau's competitive concerns.

In view of the government's responses, these comments do not alter the Court's belief that entry of the final judgment is in the public interest.

d. Reasonableness of proposed remedies

The proposed final judgment does not "make a mockery of judicial power."

The final judgment presented by the parties has been signed and accompanies this memorandum.

March 16, 2000

JAMES ROBERTSON
United States District Judges

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