IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Antitrust Division Department of Justice Washington, D.C. 20530, Plaintiff,	)	
v.	)	Civil Action No. 1:01CV02119
THE HEARST TRUST c/o The Hearst Corporation 959 Eighth Avenue New York, NY 10019 and THE HEARST CORPORATION, 959 Eighth Avenue New York, NY 10019 Defendants.	)	

MOTION FOR ENTRY OF JUDGMENT

Plaintiff, having filed its Complaint in the above-captioned case, and having filed this date a Stipulation and proposed Final Judgment, hereby moves this Court for entry of a Final Judgment against Defendant The Hearst Trust and Defendant The Hearst Corporation (collectively "Defendant Hearst"). By agreement of the parties, the Final Judgment against Defendant Hearst provides for the payment of a civil penalty totaling $4,000,000 pursuant to Section 7A(g)(1) of the Clayton Act, 15 U.S.C. § 18a(g)(1).

STATEMENT OF POINTS AND AUTHORITIES

The Complaint in this action alleges that Defendant Hearst violated Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("Hart-Scott-Rodino Act" or "Act"), Section 7A of the Clayton Act, 15 U.S.C. § 18a, which requires certain acquiring persons and certain persons whose voting securities or assets are acquired to file notification with the Department of Justice and the Federal Trade Commission and to observe a waiting period before consummating certain acquisitions of voting securities or assets. The Complaint alleges that Defendant Hearst was in continuous violation of the Hart-Scott-Rodino Act each day from January 15, 1998 until at least November 22, 2000. Under section (g)(1) of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a(g)(1), any person who fails to comply with the Act shall be liable to the United States for a civil penalty of not more than $11,000 for each day during which such person is in violation of the Act.[1] Accordingly, the Complaint seeks "an appropriate civil penalty." As the Stipulation and proposed Final Judgment indicate, Defendant Hearst has agreed to pay civil penalties totaling $4,000,000 within 30 days of entry of the Final Judgment.

The United States does not believe that the procedures of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16 (b)-(h), are required in this action. The APPA requires that any proposal for a "consent judgment" submitted by the United States in a civil case filed "under the antitrust laws" be filed with the court at least 60 days in advance of its effective date, published in the Federal Register and a newspaper for public comment, and reviewed by the court for the purpose of determining whether it is in the public interest. Key features of the APPA are

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[1] The maximum daily civil penalty, which had been $10,000, was increased to $11,000 for violations occurring on or after November 20, 1996, pursuant to the Debt Collection Improvement Act of 1996, Pub. L. 104-134 § 31001(s) and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 61 Fed. Reg. 54548 (Oct. 21, 1996).

preparation by the United States of a "competitive impact statement" explaining the proceeding and the proposed judgment, and the consideration by the court of the proposed judgment's competitive impact and its impact on the public generally as well as individuals alleging specific injury from the violation set forth in the complaint.

The procedures of the APPA are not required in this action because the Complaint seeks, and the Final Judgment provides for, only the payment of civil penalties. In our view, a consent judgment in a case seeking only monetary penalties is not the type of "consent judgment" Congress had in mind when it passed the APPA. Civil penalties are intended to penalize the defendant for violating the law, and, unlike injunctive relief, have no "competitive impact," and no effect on other persons or on the public generally, within the context of the APPA. The legislative history of the APPA does not contain any indication that Congress intended to subject settlements of civil penalty actions to its competitive impact review procedures.

Thus, courts to date have not required use of APPA procedures in cases involving only the payment of civil penalties. Indeed, courts in this district have consistently entered consent judgments for civil penalties under the Hart-Scott-Rodino Act without employing APPA procedures.[2] Previously, in *United States v. ARA Services, Inc.*, 1979-2 Trade Cas. (CCH) ¶ 62,861 (E.D. Mo.), a consent judgment calling for both equitable relief and civil penalties was

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[2] *See, e.g., United States v. Input/Output et al.*, 1999-1 Trade Cas. (CCH) ¶ 24,585 (D.D.C.); *United States v. Blackstone Capital Partners II Merchant Banking Fund et al.* 1999-1 Trade Cas. (CCH) ¶ 72,484 (D.D.C.); *United States v. The Loewen Group, Inc.*, 1998-1 Trade Cas. (CCH) ¶ 72,151 (D.D.C.); *United States v. Mahle GMBH et al.*, 1997-2 Trade Cas. (CCH) ¶ 71,868 (D.D.C.); *United States v. Figgie Int'l, Inc.*, 1997-1 Trade Cas. (CCH) ¶ 71,766 (D.D.C.); *United States v. Foodmaker, Inc.*, 1996-2 Trade Cas. (CCH) ¶ 71,555 (D.D.C.); *United States v. Titan Wheel International, Inc.*, 1996-1 Trade Cas. (CCH) ¶ 71,406 (D.D.C.); *United States v. Automatic Data Processing, Inc.*, 1996-1 Trade Cas. (CCH) ¶ 71,361 (D.D.C.); *United States v. Trump*, 1988-1 Trade Cas. (CCH) ¶ 67,968 (D.D.C.). In each case, the United States noted the issue in a motion for entry of judgment, explaining to the court that it believed the APPA inapplicable.

approved by the court on August 14, 1979, after the United States had taken the position in APPA proceedings that the civil penalties component of that judgment was not open to public objection. *See* 44 Fed. Reg. 41583 (July 17, 1979).[3] There are no circumstances favoring the use of APPA procedures in this case.

For the above reasons, the United States asks the Court to enter the Final Judgment in this case.

Dated: October 10, 2001

Respectfully submitted,

/s/

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[3] In the first case brought under the Hart-Scott-Rodino Act, *United States v. Coastal Corp.*, 1985-1 Trade Cas. (CCH) ¶ 66,425 (D.D.C.), the United States -- noting its view that the APPA was not applicable -- chose to employ the APPA procedures, believing that those procedures would in that particular case help describe to the public the circumstances and events that gave rise to the complaint and final judgment. 49 Fed. 36455 (Sept. 17, 1984). In one other civil penalties case under the Hart-Scott-Rodino Act, APPA procedures were followed. In *United States v. Bell Resources Ltd.*, 1986-2 Trade Cas. (CCH) ¶ 67,321 (S.D.N.Y), the complaint sought injunctive relief in addition to civil penalties.