

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 12-cv-00464 (RBW)
)	
HUMANA INC.)	
and)	
ACADIAN MANAGEMENT)	
SERVICES, INC.,)	
)	
Defendants.)	

ORDER

The United States, the plaintiff in this civil case, filed its complaint on March 27, 2012, contesting as anticompetitive the proposed acquisition by the first named defendant, Humana Inc., of the second named defendant, Arcadian Management Services, Inc. Complaint (“Compl.”) ¶ 1. Currently before the Court is the Motion and Memorandum of the United States in Support of Entry of Final Judgment (“Pl.’s Mot.”) pursuant to the Antitrust Procedures and Penalties Act (the “Tunney Act”), 15. U.S.C. § 16 (2006).

The United States claims that the consummation of the proposed acquisition would constitute a violation of Section Seven of the Clayton Act, 15 U.S.C. § 18 (2006), because the acquisition “likely would substantially lessen competition in the sale of Medicare Advantage health insurance in each of the relevant geographic markets.”¹ Compl. ¶ 30. The United States now requests that the Court enter the proposed Final Judgment to “remedy[] the loss of competition alleged in the Complaint.” Final Judgment (“Final J.”) at 3. Specifically, the

¹ The “relevant geographic markets” consist of “forty-five counties and parishes in Arizona, Arkansas, Louisiana, Oklahoma, and Texas.” Pl.’s Mot. at 2; see also Compl. ¶ 23 (listing counties and parishes).

proposed Final Judgment would require the defendants to divest certain Divestiture Assets, as defined in the Final Judgment. *Id.* 3, 5, 8. The defendant has agreed to entry of the proposed Final Judgment without further notice to any party or other proceedings. 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.²

In civil antitrust cases, the Tunney Act permits the United States to propose and courts to enter a final judgment resolving and preventing anticompetitive behavior. 15 U.S.C. § 16 (2006). Before a proposed final judgment may be entered, 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 alleged 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 the United States must accept and respond to public comments during a sixty day window following publication. 15 U.S.C. § 16(b)-(d). After the Act’s threshold requirements are satisfied, 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

² In addition to the filings already identified, the Court considered the following submissions in rendering its decision: (1) the plaintiff’s Tunney Act Notice; (2) the plaintiff’s Response to Public Comments; (3) the plaintiff’s Competitive Impact Statement; and (4) the plaintiff’s Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act (“Cert. of Compl.”).

court deems necessary to a determination of whether the consent judgment is in the public interest; and

- (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, 1236 (D.C. Cir. 2004) (quoting Mass. Sch. of Law at Andover, Inc. v. United States, 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. 15 U.S.C. § 16(e)(2). However, the proposed final judgment must remedy only the anticompetitive behavior alleged in the complaint and it must not 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. W. Elec. Co., 900 F.2d 283, 309 (D.C. Cir. 1990) (quoting United States v. Bechtel Corp., 648 F.2d 660, 666 (9th Cir. 1981) (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 March 27, 2012, the United States filed both the proposed Final Judgment and the Competitive Impact Statement with the Court. Cert. of Compl. at 1. On April 4, 2012, the United States published both documents in the Federal Register, United States v. Humana, Inc., 77 Fed. Reg. 20419, and, beginning on

May 5, 2012, the United States published the proposed Final Judgment in The Washington Post for seven consecutive days, Cert. of Compl. ¶ 4. Sixty days were then allowed for public comment on the proposed Final Judgment, and the United States responded to the single public comment it received. Id. at 2; 77 Fed. Reg. 56674 (attaching the comment, which supports the United States' proposed Final Judgment and "state[s] that the action against the defendants address[es] the important issue of health insurer consolidation") (internal quotation marks omitted).

Additionally, the Court concludes that the proposed Final Judgment is in the public interest. The terms of the proposed Final Judgment unambiguously terminate the anticompetitive behavior that gave rise to the Complaint filed in this case by the United States. The procedures governing the divestment of the Divesture Assets are clearly delineated in the Final Judgment. Final J. at 8-18. The Court finds that the appointment of a Monitoring Trustee, id. at 19-21, and the appointment of a Divesture Trustee, if needed, id. at 15-18, will be effective enforcement mechanisms. Moreover, it provides that 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 23. Because the proposed Final Judgment requires the defendants to preserve and to ensure the continued operation of the Divesture Assets, no positive third-party injuries are likely to result from entering the proposed Final Judgment. Id. at 7-9, 19. The proposed Final Judgment is a reasonable response to the anticompetitive effects of the defendants' planned transaction and is appropriate in scope, and thus approval 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**. It is further

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

SO ORDERED this 22nd day of October, 2012.

REGGIE B. WALTON
United States District Judge