

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 ) 78 Civ. 2491 (P.N.L.)  
 v. )  
 )  
 CBS INC., )  
 )  
 Defendant. )

COMPETITIVE IMPACT STATEMENT

The United States pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. §16(b)-(h), files this Competitive Impact Statement in connection with the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

NATURE AND PURPOSE OF THE PROCEEDING

On June 1, 1978, the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, 15 U.S.C. §25, challenging the acquisition of Fawcett Publications Inc. (Fawcett) by CBS Inc. (CBS) as a violation of Section 7 of the Clayton Act, 15 U.S.C. §18. The complaint alleges that the effect of the acquisition may be substantially to lessen competition or to tend to create a monopoly in mass market paperback publishing. The complaint charges that competition between CBS and Fawcett was eliminated, competition in the mass market paperback industry in general may be lessened, and concentration had been increased in that industry to the detriment of actual and potential competition. The complaint sought to have CBS divest Fawcett and restore it to its pre-acquisition posture and to enjoin CBS, its directors, agents, and all other persons acting on its behalf, from acquiring the stock or assets of any firm engaged in the publishing, distribution or sale of mass market paperback books.

Entry of the proposed Final Judgment will terminate this litigation. The Court will retain jurisdiction to construe, modify, or enforce the proposed Final Judgment.

## II

### THE ACQUISITION AND THE ALLEGED VIOLATION

On January 7, 1977, JAC Inc., a wholly-owned subsidiary of CBS acquired Fawcett for \$50 million in cash. At the time of the acquisition, Fawcett published mass market paperback books under the Gold Medal and Crest imprints; trade paperback books under the Premier, Fawcett, and Fawcett Special imprints; three monthly special interest magazines; and a number of annual and "one shot" publications in magazine format. Fawcett also operated a printing plant not utilized in the production of paperback books, a magazine subscription service, and a distribution service which sold Fawcett's magazines and mass market paperback books to the more than 500 independent wholesalers in the United States and Canada. Since the acquisition CBS has sold the Fawcett printing plant.

Prior to the Fawcett acquisition, CBS was engaged in mass market paperback publishing through its Popular Library Books Division (Popular Library), which it acquired in 1971. The United States alleged that Popular Library and Fawcett were competitors in two lines of commerce: the purchase of the rights to publish mass market paperback books and the sale of mass market paperback books.

Mass market paperback books were described in the complaint as paperbound books, usually of standard rack size (4 1/4"x 7"), which are distributed predominantly to mass market outlets such as newsstands, drug stores, and variety stores by local wholesale distributors, who in turn receive the books from national distributors. The complaint alleged that mass market paperback books differ from all other books in their method of distribution, price, size, physical components, production facilities, and marketing method.

The complaint stated that Fawcett and Popular Library accounted for approximately 9.4% and 2.6%, respectively, of 1976 mass market paperback sales, with the top four companies accounting for approximately 53% of 1976 sales and the top eight for approximately 81%. The complaint additionally alleged that the industry was experiencing a trend towards further concentration.

### III

#### THE PROPOSED CONSENT JUDGMENT AND ITS ANTICIPATED EFFECTS ON COMPETITION

The United States and the defendant have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. §16(b)-(h) (1974). The proposed Final Judgment constitutes no admission by either party as to any issue of fact or law. Under the provisions of the Antitrust Procedures and Penalties Act, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed Final Judgment is in the public interest.

The proposed Final Judgment contains two principal forms of relief. First, the defendant is required to sell Popular Library. Second, the defendant is enjoined from acquiring any other mass market paperback publisher, except with the prior written consent of the United States, for ten years from the date the proposed Final Judgment is entered, or until it ceases owning a mass market paperback publisher, whichever occurs first.

#### A. CBS Has A Duty To Divest Popular Library

Under the proposed Final Judgment, CBS is ordered to sell Popular Library within two years from the date of entry of the proposed Final Judgment. Popular Library is defined in the proposed Judgment as "the Popular Library paperback book imprint of the Fawcett Books Group of the Consumer Publishing Division of CBS."

The proposed Final Judgment specifically delineates the assets to be divested. CBS must sell the exclusive right to use the Popular Library name in the paperback book publishing business. CBS must also sell the rights to books previously published under the Popular Library imprint, the rights to books purchased for the Popular Library imprint which have not been published at the time of divestiture, the assignable rights to contracts with Popular Library authors, and all inventories of books published under the Popular Library imprint. If the buyer agrees, CBS may, with the consent of the plaintiff, sell less than all of these assets. If such consent is refused, CBS may do so with the Court's approval. CBS must sell or grant to the purchaser of Popular Library all rights owned by CBS for the trademarks or colophons (i.e., the publisher's distinctive emblems) used for Popular Library on or after January 7, 1977, except for any trademark or colophon which includes the words "CBS" or "Fawcett".

If the purchaser so desires, CBS must provide the purchaser of Popular Library with distribution services. The services are to be provided for up to three years following divestiture, or for as long as CBS remains in the business of distributing books to magazine wholesalers, whichever is shorter, and at a reasonable price and upon reasonable terms and conditions, including those concerning the quantity of titles to be distributed by CBS. CBS is not obligated to distribute any book inconsistent with the standards it in fact applies to other books it distributes to magazine wholesalers. The United States insisted that a distribution contract be made available to the purchaser of Popular Library to ensure that the purchaser's opportunity to become a more substantial competitor in mass market paperback publishing not be hindered by any bottleneck in the distribution system.

CBS is to make known the availability of Popular Library for sale by means customary in the publishing industry. Among

the means currently being considered by CBS are the following: counsel for CBS stated that CBS plans to contact all firms which it believes may be interested in purchasing Popular Library and CBS is planning to prepare an offering circular which will be sent to those who may be interested.

If Popular Library has not been divested at the end of one year, CBS must employ one or more investment banking firms or business finders to sell Popular Library. The compensation for any such firm or firms is to be based in significant part on a commission arrangement contingent upon the firm bringing about the sale of the business.

While divestiture is pending, CBS assumes several affirmative obligations designed to preserve Popular Library's business and to enable the United States to monitor CBS's sales efforts: (1) CBS must operate Popular Library as an active paperback imprint, and use its best efforts to maintain Popular Library as a competitive entity. (2) CBS must maintain a record of its efforts to accomplish the divestiture. The United States has the right to receive this information upon request, but in any event will receive a copy of the record every 60 days for a period of two years following entry of the proposed Final Judgment, or until divestiture, whichever occurs first. (3) CBS must report promptly to the United States the complete details of any proposed plan of divestiture. The United States has the right to object to any such plan, and the proposed divestiture cannot be consummated unless the Government withdraws its objection or the Court approves the divestiture. (4) CBS must notify the United States in writing within ten days of any offer to purchase. If CBS rejects any offer to purchase, it must notify the United States in writing within ten days and state the reasons for such rejection.

Any divestiture will be complete and final, except that CBS may retain a security interest to secure performance of any unpaid portion of the purchase price or to secure performance of the contract of sale. If CBS reacquires control of Popular

Library pursuant to the exercise of such a security interest, its control must be divested within one year thereafter.

The CBS obligation to divest Popular Library or to resell any interest in Popular Library reacquired through the exercise of a security interest terminates at the end of the two-year and one-year time periods, respectively, unless the Court orders otherwise. At any time during either time period specified above, the United States has the right to petition the Court for an order requiring additional CBS efforts to sell Popular Library. Such an order shall be issued upon a showing that divestiture has not been accomplished either because of an inadequate effort to sell or upon any rejection of a reasonable offer to buy. Such an order could require CBS to accept a specific reasonable offer to buy. The United States may also, within 45 days of the end of either time period specified above, secure an order extending the time for CBS to divest Popular Library and requiring additional efforts by CBS.

B. Prohibited Conduct

For ten years from the date of entry of the proposed Final Judgment or until it ceases owning a mass market paperback publisher, whichever occurs first, CBS is forbidden from acquiring all or any part of the stock or book publishing assets, other than books or publication rights in the normal course of business, of any mass market paperback publisher, except with the prior written consent of the United States, or if such approval is refused, then upon approval of the Court.

A mass market paperback publisher is defined in the proposed Final Judgment as a United States publisher of any imprint or line of paperback books (1) which is predominantly rack size (approximately 4" x 7" in size) and (2) at least forty percent of the net sales of which imprint or line are to magazine wholesalers (sometimes referred to as independent distributors or ID wholesalers). The proposed Final Judgment

does not prohibit CBS from acquiring in good faith the stock or book publishing assets of any mass market paperback publisher in the exercise of any security or debt or liability enforcement process, whether provided by law or bona fide agreement, so long as CBS disposes of such stock or assets within two years after they are acquired.

C. Scope Of The Proposed Final Judgment

The provisions of the proposed Final Judgment apply to CBS and each of its directors, officers, employees, agents, subsidiaries, affiliates, successors, and assignees, and to all other persons in active concert or participation with any of them who receive actual notice of the proposed Final Judgment by personal service or otherwise.

D. Effect Of The Proposed Final Judgment On Competition

The assets to be divested plus the distribution contract should either enable someone not already in mass market paperback publishing to enter, or permit an existing small publisher to become a more significant competitor. The United States believes, therefore, that the disposition of this proceeding by the proposed Final Judgment is appropriate and in the public interest.

IV

REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act (15 U.S.C. §15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment will neither impair nor assist private antitrust damage actions. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. §16(a)), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against the defendant.

V

PROCEDURES AVAILABLE FOR MODIFICATION  
OF THE PROPOSED CONSENT JUDGMENT

The proposed Final Judgment is subject to a stipulation between the Government and the defendant which provides that the Government may withdraw its consent to the proposed Judgment any time before the Court has found that entry of the proposed Judgment is in the public interest. By its terms, the proposed Judgment provides for the Court's retention of jurisdiction of this action in order to permit any of the parties to apply to the Court for such orders as may be necessary for the modification of the Final Judgment.

As provided by the Antitrust Procedures and Penalties Act, 15 U.S.C. §16(b)-(h), any person wishing to comment upon the proposed Judgment may, for a sixty-day statutory period submit written comments to the United States Department of Justice, Attention: Alan L. Marx, Acting Chief, General Litigation Section, Antitrust Division, Department of Justice, Washington, D.C. 20530. Such comments and the Government's response to them will be filed with the Court and published in the Federal Register. The Government will evaluate all such comments to determine whether there is any reason for withdrawal of its consent to the proposed Final Judgment.

VI

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The alternative to the proposed Final Judgment considered by the United States was a trial on the merits and on relief. While the complaint sought divestiture of Fawcett to restore the competition lost due to the merger, the United States considers the proposed Final Judgment to be an acceptable alternative to seeking divestiture of Fawcett via a trial on the merits.

The proposed Judgment would achieve the objectives of the lawsuit, and also save the Government the expense of litigation. The principal anticompetitive effect alleged in



the complaint was the loss of competition in the mass market paperback industry. The divestiture of either Fawcett or Popular Library would tend to restore the competition lost due to this merger.

Under the circumstances, the United States believes that entry of the proposed Final Judgment is in the public interest.

VII

DETERMINATIVE MATERIALS AND DOCUMENTS

No materials or documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act were considered in formulating this proposed Final Judgment.

Respectfully submitted,

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