

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

UNITED STATES OF AMERICA,
c/o Department of Justice
Antitrust Division
Washington, DC 20530

Plaintiff,

v.

TENGELMANN
WARENHANDELSGESELLSCHAFT
Wissollstrasse 5-43
4330 Mulheim/Ruhr
West Germany

and

THE GREAT ATLANTIC & PACIFIC
TEA COMPANY, INC.
2 Paragon Drive
Montvale, New Jersey 07645

Defendants.

Civil Action No. 89-1621

Filed: June 5, 1989

COMPLAINT FOR CIVIL PENALTY FOR VIOLATION
OF PREMERGER REQUIREMENTS OF HART-SCOTT-RODINO ACT

The United States of America, plaintiff, by its attorneys,
acting under the direction of the Attorney General of the United
States and at the request of the Federal Trade Commission, brings
this civil action to obtain monetary relief in the form of a
civil penalty against the defendants named herein, and alleges as
follows:

I.

JURISDICTION AND VENUE

1. This Complaint is filed and these proceedings are instituted under Section 7A of the Clayton Act, 15 U.S.C. § 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("Hart-Scott-Rodino Act"), to recover a civil penalty for violation of the Hart-Scott-Rodino Act.

2. This Court has jurisdiction over the defendants and over the subject matter of this action pursuant to 15 U.S.C. § 18a(g) and 28 U.S.C. §§ 1331, 1337, 1345 and 1355.

3. Venue is properly based in this District under 28 U.S.C. §§ 1391(b), 1391(c), 1391(d) and 1395(a); and 15 U.S.C. § 22. Venue in this District is also proper by virtue of defendants' consent to the maintenance of this action and entry of Final Judgment in this District, as provided in the Stipulation relating hereto.

II.

THE DEFENDANTS

4. The Great Atlantic & Pacific Tea Company, Inc. ("A&P") is made a defendant herein. A&P is incorporated in the State of Maryland. Its principal executive offices are located at 2 Paragon Drive, Montvale, New Jersey 07645. A&P operates retail food stores and other facilities in approximately 26 states and the District of Columbia.

5. Tengermann Warenhandelsgesellschaft ("Tengermann") is made a defendant herein. Tengermann is a partnership organized under the laws of West Germany. Its business offices are located at Wissollstrasse 5-43, 4330 Mulheim/Ruhr, West Germany. At all times pertinent to this proceeding, Tengermann has been the ultimate parent entity of A&P.

III.

WALDBAUM, INC.

6. Waldbaum, Inc. ("Waldbaum's") is incorporated in the State of New York. Its principal executive offices are located at Hemlock Street and Boulevard Avenue, Central Islip, New York 11722. Waldbaum's operates retail food stores in the states of New York, Connecticut and Massachusetts. Waldbaum's was a competitor of defendant A&P in 1986.

IV.

VIOLATION ALLEGED

7. The Hart-Scott-Rodino Act, 15 U.S.C. § 18a, prohibits certain acquisitions of voting securities or assets until a notification has been filed with the Department of Justice and the Federal Trade Commission and a waiting period has expired.

8. Each of the defendants presently has, and in 1986 had, sales or assets at or above the \$100 million threshold established by Section (a) of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a(a), for companies acquiring the voting securities of other companies.

9. Waldbaum's presently has, and in 1986 had, sales or assets at or above the \$10 million threshold established by Section (a) of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a(a), for non-manufacturing companies whose voting securities are being acquired.

10. On or about November 26, 1986, defendants acquired approximately 54.7% of Waldbaum's voting securities held by approximately 32 members of the Waldbaum family. The price paid far exceeded \$15 million. On November 28, 1986, defendants mounted a tender offer for the remaining voting securities. The tender offer expired on December 29, 1986, and on the following day, A&P acquired the tendered securities.

11. Both A&P and Waldbaum's at all times pertinent to this proceeding have been engaged in commerce, or in activities affecting commerce, within the meaning of Section (a)(1) of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a(a)(1).

12. The acquisition of Waldbaum's was structured through a general partnership comprising A&P and five members of the Waldbaum family.

13. The partnership was created for the purpose of avoiding the obligation to comply with the notification and waiting period requirements of the Hart-Scott-Rodino Act. The substance of the transaction involving the partnership was that of an acquisition by defendants of Waldbaum's.

14. The Hart-Scott-Rodino Act and regulations promulgated thereunder, 16 C.F.R. § 800 et seq., required Tengelmann, as the

ultimate parent entity of A&P, or A&P, as an entity included within Tengelmenn and authorized by Tengelmenn to file on Tengelmenn's behalf, to file a notification and to observe a waiting period before acquiring an aggregate amount of voting securities of Waldbaum's in excess of \$15 million.

15. Defendants did not comply with the notification and waiting period requirements of the Act before making the acquisitions described in Paragraph 10 above.

16. On November 3, 1988, Tengelmenn submitted a notification and report form under the Hart-Scott-Rodino Act in connection with the acquisition of Waldbaum's. The Hart-Scott-Rodino Act waiting period relating to that filing expired on November 18, 1988.

17. Defendants were continuously in violation of the Hart-Scott-Rodino Act during the period November 26, 1986, through November 18, 1988.

18. Section (g)(1) of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a(g)(1), provides that any person who fails to comply with the Act shall be liable to the United States for a civil penalty of not more than \$10,000 for each day during which such person is in violation of the Act.

V.

PRAYER

WHEREFORE, Plaintiff prays that this Court:

1. Adjudge and decree that defendants' purchases of voting securities of Waldbaum's were in violation of the

Hart-Scott-Rodino Act, 15, U.S.C. § 18a, and that defendants have been in violation of that Act each day from the period November 26, 1986, through November 18, 1988;


2. Order defendants to pay to the United States Treasury an appropriate civil penalty as provided by Section (g)(1) of the Hart-Scott-Rodino Act, 15 U.S.C. § 18(a)(g)(1);


3. Grant such other, further relief as the Court may deem just and proper; and

4. Award plaintiff its costs of this suit.

Dated:

FOR PLAINTIFF UNITED STATES
OF AMERICA


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