

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

LEARFIELD COMMUNICATIONS, LLC,
IMG COLLEGE, LLC and A-L TIER I LLC,

Defendants.

CASE: 1:19-cv-00389-EGS

**PLAINTIFF UNITED STATES' UNOPPOSED MOTION AND MEMORANDUM IN
SUPPORT OF ENTRY OF THE FINAL JUDGMENT**

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (“APPA”), Plaintiff United States moves for entry of the proposed Final Judgment filed in this civil antitrust proceeding on February 14, 2019 (Dkt. No. 2-2) (attached as Exhibit A).

The proposed Final Judgment may be entered at this time without further proceedings if the Court determines that entry is in the public interest. 15 U.S.C. § 16(e). The Competitive Impact Statement (“CIS”) filed by the United States on February 14, 2019 (Dkt. No. 3), explains why entry of the proposed Final Judgment is in the public interest. The United States is also filing a Certificate of Compliance (attached as Exhibit B), showing that the parties have complied with all applicable provisions of the APPA and certifying that the sixty-day statutory public comment period has expired.

I. Background

On February 14, 2019, the United States filed a civil antitrust Complaint alleging that the Defendants agreed or otherwise coordinated to limit competition, resulting in an unlawful

restraint of trade in the multimedia rights (“MMR”) management market under Section 1 of the Sherman Act. The Complaint seeks injunctive relief to enjoin the Defendants from engaging in similar conduct in the future.

At the same time the Complaint was filed, the United States filed a proposed Final Judgment, a Stipulation, and a CIS describing the events giving rise to the alleged violation and the proposed Final Judgment. The Stipulation, which was signed by the parties, provides that the proposed Final Judgment may be entered by the Court once the requirements of the APPA have been met.

The proposed Final Judgment prohibits sharing of competitively sensitive information, agreeing not to bid or agreeing to jointly bid, and, absent approval from the United States, entering into or extending MMR joint ventures. It also requires the Defendants to implement antitrust compliance training programs. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

II. Compliance with the APPA

The Certificate of Compliance filed with this Motion and Memorandum states that all the requirements of the APPA have been satisfied. In particular, the APPA requires a sixty-day period for the submission of written comments relating to the proposed Final Judgment. 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed the proposed Final Judgment and CIS with the Court on February 14, 2019; published the proposed Final Judgment and CIS in the *Federal Register* on February 28, 2019, *see* 84 Fed. Reg. 6,824; and had summaries of the terms of the proposed Final Judgment and the CIS , together with directions for the submission of written comments relating to the proposed Final Judgment, published in *The*

Washington Post for seven consecutive days on February 27, 2019 to March 5, 2019. Thus, all publication requirements necessary under the APPA have been satisfied. The sixty-day public comment period terminated on May 6, 2019.

During the public comment period, the United States received a comment. On February 3, 2020, the United States filed with the Court its Response to Public Comment. Pursuant to 15 U.S.C. § 16(d), on February 10, 2020, the United States published in the *Federal Register* the Comment and the Response to Public Comment. *See* 85 Fed. Reg. 7,593. It is appropriate for the Court to enter the proposed Final Judgment if it finds that it is in the public interest pursuant to 15 U.S.C. § 16(e).

III. Standard of Judicial Review

Before entering the proposed Final Judgment, the APPA requires the Court to determine whether the proposed Final Judgment “is in the public interest.” 15 U.S.C. § 16(e)(1). In making that determination, in accordance with the statute, the Court “shall consider”:

- (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 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)(A), (B). Section 16(e)(2) of the APPA states that “[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.” 15 U.S.C. § 16(e)(2). In its CIS and Response to Public Comment, the United States explained the meaning and the proper application of the public

interest standard under the APPA and now incorporates those portions of the CIS and Response to Public Comment by reference.

IV. Entry of the Proposed Final Judgement Is in the Public Interest

As described above, the United States alleged in its Complaint that the Defendants agreed or otherwise coordinated with one another, as well as between themselves and competitors, to limit competition in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Defendants, under the guise of legitimate business arrangements, used joint ventures to deny universities the benefits of competition. The Complaint further alleges that the Defendants have used, or attempted to use, joint ventures as a way to co-opt smaller competitors and remove them from submitting competitive bids and that the Defendants' non-compete agreements have had similar effects. As explained in the CIS and Response to Public Comment, the remedy in the proposed Final Judgment is designed to prevent the Defendants from sharing competitively sensitive information and agreeing or coordinating with MMR competitors to reduce or eliminate competition and, thereby, deny universities the benefits of a competitive MMR market.

The public, including affected competitors and customers, has had the opportunity to comment on the proposed Final Judgment, and one comment from a competitor was submitted. As explained in the Competitive Impact Statement and the Response to Public Comment, entry of the proposed Final Judgment is in the public interest.

V. Conclusion

For the reasons set forth in this Motion and Memorandum, in the CIS, and in the Response to Public Comment, the United States respectfully requests that the Court find that the

proposed Final Judgment is in the public interest and enter the proposed Final Judgment without further proceedings.

Dated: March 27, 2020

Respectfully submitted,

/s/

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