

FTC news

Federal Trade Commission *Washington, D.C. 20580*

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**A&P AGREES TO PAY \$3 MILLION IN CIVIL PENALTIES
TO SETTLE GOVERNMENT CHARGES THAT IT VIOLATED
PREMERGER NOTIFICATION RULES**

The Great Atlantic & Pacific Tea Co. Inc. (A&P) did not comply with federal premerger notification requirements when it acquired Waldbaum Inc. in 1986, the government charged today. A&P agreed to pay a \$3 million civil penalty to settle the charges. This is the largest civil penalty the Federal Trade Commission has ever secured for violation of the Hart-Scott-Rodino Act, according to FTC Chairman Daniel Oliver.

The Department of Justice filed the complaint and Final Judgment in the U.S. District Court for the District of Columbia, at the FTC's request.

A&P operates grocery stores throughout 26 states and the District of Columbia. Waldbaum's operates grocery stores in New York, Connecticut and Massachusetts, and was a direct competitor of A&P.

According to the complaint, A&P acquired more than half of Waldbaum's voting securities from the Waldbaum family on November 26, 1986, for more than \$15 million, and acquired the publicly held securities on December 30, 1986.

The complaint charges that the acquisition was structured as a general partnership made up of A&P and five members of the Waldbaum family. However, according to the complaint, 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 ... was that of an acquisition by defendants of Waldbaum's."

The Hart-Scott-Rodino Act requires companies larger than a certain size to notify the FTC and the Department of Justice, and to observe a waiting period, before making certain acquisitions. According to the complaint, A&P made no such filing before acquiring Waldbaum's.

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Chairman Oliver noted that the case should be taken as a warning by those who might seek to evade premerger notification obligations. The Chairman observed that, "There are those who talk about a so-called 'partnership loophole' in our premerger notification rules that supposedly permits firms to make acquisitions without informing us simply by using a partnership as the acquisition vehicle. By this action today, the Commission has made it clear that it will not permit parties to use partnerships, or any other devices, to avoid Hart-Scott-Rodino reporting and waiting requirements. Indeed, would-be evaders should stand warned that far larger penalties, and possibly even more drastic sanctions, await future violators."

The Commission vote to file the complaint and accept the settlement was 3-2, with Commissioners Mary L. Azcuenaga and Andrew J. Strenio, Jr., dissenting. Commissioner Strenio dissented because, in his opinion, the civil penalty amount was inadequate when compared to the gains reaped by A&P, the Commission's authority to obtain full disgorgement of these ill-gotten gains should have been used, and the settlement should have contained injunctive relief as a safeguard for the future.

Waldbaum's is based in Central Islip, N.Y. A&P is based in Montvale, N.J. Also named as a defendant was its ultimate parent company, Tengelmann Warenhandelsgesellschaft, of Mulheim/Ruhr, West Germany.

This final judgment is for settlement purposes only and does not constitute an admission by the companies that they have violated the law. The judgment is subject to court approval.

Copies of the complaint and final judgment will be available soon from the FTC's Public Reference Branch, Room 130, 6th St. and Pennsylvania Ave. N.W. Washington, D.C. 20580; 202-326-2222; TTY 202-326-2502.

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