

1/ The United States does not believe that the Antitrust Procedures and Penalties Act is applicable in actions where the complaint seeks, and the final judgment provides for, only the payment of civil penalties. The government has taken this position with respect to the consent judgment in United States v. RSR Corp., Civ. No. CA3-83-1828-C (N.D. Tex.) (decree entered November 1, 1983) and the civil penalties component of the consent judgment in United States v. ARA Services, Inc., Civ. No. 77-1165-C (E.D. Mo.) (consent judgment, including civil penalties, approved August 14, 1979). We believe it appropriate to follow the procedures of the Antitrust Procedures and Penalties Act here, however, because those procedures provide an excellent means of describing to the public the proposed Final Judgment in this first civil penalty action brought under the Hart-Scott-Rodino Act and the circumstances and events that gave rise to the proposed Final Judgment.

I.

Nature and Purpose of the Proceeding

On August 30, 1984, the United States, at the request of the Federal Trade Commission ("FTC"), filed a suit for a civil penalty under Section 7A of the Clayton Act, commonly known as the Hart-Scott-Rodino Act ("HSR Act"), 15 U.S.C. § 18a, alleging that The Coastal Corporation ("Coastal" or "Defendant") had violated the HSR Act. The HSR Act imposes certain notification and waiting period requirements on parties meeting the size threshold that are contemplating relatively large acquisitions of voting securities or assets.

The manifest congressional intent behind the HSR Act was to give the Government the information needed to determine whether such an acquisition would violate the antitrust laws, and an opportunity to block an anticompetitive acquisition, before it is consummated.

The complaint alleges that Coastal did not comply with the notification and waiting period requirements of the HSR Act before it acquired 75,500 shares of Houston Natural Gas Corporation ("HNG") on January 19, 1984. The complaint asks the Court to: (1) find that Defendant violated the HSR Act; and (2) require Defendant to pay a civil penalty of \$230,000.

On the same day the complaint was filed, the parties filed a proposed Final Judgment, Stipulation and this Competitive

Impact Statement. Under the Stipulation, the proposed Final Judgment may be entered after compliance with the procedures of the Antitrust Procedures and Penalties Act. Entry of the proposed Final Judgment will terminate the action.

II.

Practices and Events Giving Rise to the Alleged Violation

On January 19, 1984, Coastal, which already held voting securities of HNG valued in excess of \$15 million, purchased 75,500 additional shares of HNG common stock. Prior to purchasing this stock, Coastal did not file a HSR Act premerger notification and report form nor did it observe the waiting period prescribed by the Act. Because of the size of Coastal and HNG, the extent of Coastal's holdings of HNG stock, and the involvement of Coastal and HNG in interstate commerce, the January 19, 1984 transaction was subject to the HSR Act's notification and waiting requirements unless an exemption applied. (See 15 U.S.C. § 18a(a).)

The January 19, 1984 stock purchases would be exempt from the requirements of the HSR Act if made "solely for the purpose of investment" as that term is used in the Act (15 U.S.C. § 18a(c)(9)) and the Act's implementing regulations (16 C.F.R. §§ 801.1, 802.9). The Federal Trade Commission's Bureau of Competition ("Bureau") conducted an investigation of Coastal's January 19th purchases in order to determine whether the

purchases were "solely for the purpose of investment." The Bureau's investigation indicated that the purchases were not made "solely for the purpose of investment." Thus, the Bureau concluded, as the complaint alleges, that Coastal's January 19, 1984 acquisition violated the notification and waiting requirements of the HSR Act.

On January 27, 1984, Coastal publicly announced a tender offer for additional shares of HNG stock and filed a notification and report form pursuant to the HSR Act with regard to that proposed acquisition. The waiting period relating to this tender offer expired February 11, 1984, after which Coastal could acquire HNG shares without violating the HSR Act. The complaint alleges that Coastal remained in violation of the HSR Act at least through February 11, 1984.

Coastal has divested the 75,500 shares it acquired on January 19, 1984. (See Complaint, Attachment 1.) Coastal was required to divest those shares by an agreement it entered into with the Bureau on February 10, 1984. (See Complaint, Attachment 2.)

III.

Explanation of the Proposed Final Judgment

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 procedures of the Antitrust Procedures and Penalties Act. The proposed Final Judgment does

not constitute an admission by any party as to any issue of law or fact. 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 Judgment is in the public interest.

The proposed Final Judgment requires the defendant to pay a civil penalty to the United States Treasury. Section (g)(1) of the HSR Act, 15 U.S.C. § 18a(g)(1), provides that any person who fails to comply with the requirements of the HSR Act shall be liable in an action brought by the United States for a civil penalty of not more than \$10,000 for each day during which such person is in violation.

The proposed judgment imposes on Coastal a civil penalty of \$230,000, an amount representing the maximum \$10,000 per day for each of the 23 days that Coastal was alleged in the complaint to be in violation of the Act. Payment is due within 15 days from the date of entry of the Final Judgment. The proposed judgment also contains a provision regarding the payment of interest to be required in the event that Coastal's payment is more than 10 days late.

IV.

Competitive Effect of the Proposed Final Judgment

The relief encompassed in the Final Judgment is aimed at penalizing and thereby deterring non-compliance with the

notification and waiting requirements of the HSR Act.

Prior to the passage of the HSR Act, the antitrust enforcement agencies often lacked sufficient time and information to obtain an adequate remedy for an anticompetitive acquisition. By assuring that the antitrust enforcement agencies receive prior notification and information concerning significant acquisitions involving sizeable parties, the HSR Act has improved the effectiveness of antitrust enforcement. Strict compliance with the Act's notification and reporting requirements is essential if the government is to be effective in interdicting anticompetitive acquisitions.

The Final Judgment requires Defendant to pay the Act's maximum civil penalty of \$10,000 per day for each day that defendant was alleged to be in violation of the Act. While civil penalties are intended to penalize a defendant for violating the law and, unlike structural or other forms of injunctive relief in antitrust cases, have no competitive effect in and of themselves, the civil penalty in this case will help deter Defendant and others who in the future may be similarly situated from failing to comply with the notice and waiting requirements of the HSR Act. Compliance with these requirements will strengthen antitrust enforcement and thereby help to maintain competitive markets.

V.

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 such person has suffered, as well as costs and reasonable attorneys fees. Entry of the proposed Final Judgment in this proceeding will neither impair nor assist the bringing of any such private antitrust action. Under Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed judgment has no prima facie effect in any private lawsuit that may be brought against the defendant.

VI.

Procedures Available for Modification
of the Proposed Final Judgment

The proposed Final Judgment is subject to a Stipulation between the United States and the Defendant providing that the United States may withdraw its consent to the proposed Judgment at any time before it is entered by the Court. The Antitrust Procedures and Penalties Act conditions entry upon the Court's determination that the proposed Judgment is in the public interest.

The Antitrust Procedures and Penalties Act provides a period of at least sixty days preceding the entry of the

proposed Final Judgment within which any person may submit to the United States comments regarding the proposed Final Judgment. The United States will evaluate any such comments and determine whether it should withdraw its consent. The comments and the response of the United States to the comments will be filed with the Court and published in the Federal Register in accordance with the Antitrust Procedures and Penalties Act.

Written comments should be submitted to:

Mark Leddy
Deputy Director of Operations
Antitrust Division
U.S. Department of Justice
Washington, D.C. 20530

VII.

Alternatives to the Proposed Final Judgment

All substantive relief requested in the Complaint is included in the proposed Final Judgment. Accordingly, the United States did not consider alternatives.

VIII.

Determinative Documents

The United States has brought this action at the request of the Federal Trade Commission. In formulating the proposed Final Judgment, the United States considered determinative a February 10, 1984 letter agreement between Coastal and the FTC's Bureau of Competition. That letter agreement is attached

to the complaint as Attachment 2, and is being filed along with this Competitive Impact Statement.

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