

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, D.C. 20530

Plaintiff,

v.

ATLANTIC RICHFIELD COMPANY
515 South Flower Street
Los Angeles, California 90071

ARCO CHEMICAL COMPANY
3801 West Chester Pike
Newtown Square, Pennsylvania 19073

UNION CARBIDE CORPORATION
39 Old Ridgebury Road
Danbury, Connecticut 06817-7001

UNION CARBIDE CHEMICALS AND PLASTICS
COMPANY INC.
39 Old Ridgebury Road
Danbury, Connecticut 06817-7001,

Defendants.

91 0205

Civil Action No.

MOTION FOR ENTRY OF JUDGMENT

Plaintiff, having this date filed its Complaint in the above-captioned case, together with a Stipulation and proposed Final Judgment, hereby moves this Court for entry of Final Judgment. By agreement of the parties, the Final Judgment provides for the payment by defendants Atlantic Richfield Company and ARCO Chemical Company (collectively "ARCO

defendants") of a total civil penalty of \$1,000,000, and by defendants Union Carbide Corporation and Union Carbide Chemicals and Plastics Company Inc. (collectively "Union Carbide defendants") of a total civil penalty of \$1,000,000 under Section 7A(g)(1) of the Clayton Act, 15 U.S.C. § 18a(g)(1).

STATEMENT OF POINTS AND AUTHORITIES

The Complaint in this action alleges that defendants, in connection with an acquisition of assets by the ARCO defendants from the Union Carbide defendants, violated the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("Hart-Scott-Rodino Act"), 15 U.S.C. § 18a, which 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. The Complaint alleges that defendants were continuously in violation of the Hart-Scott-Rodino Act during the period from September 27, 1989 through February 26, 1990. 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. Accordingly, the Complaint seeks "an appropriate civil penalty." As the Stipulation and proposed Final Judgment indicate, the ARCO defendants have agreed to pay

a total penalty of \$1,000,000 and the Union Carbide defendants have agreed to pay a total civil penalty of \$1,000,000. Payments are to be made within 15 days of the entry of the Final Judgment.

The Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), requires that any proposal for a "consent judgment" submitted by the United States in a civil case filed "under the antitrust laws" be filed with the court at least 60 days in advance of its effective date, published in the Federal Register and newspaper for public comment, and reviewed by the court for the purpose of determining whether it is in the public interest. Key features of the APPA are preparation by the United States of a "competitive impact statement" explaining the proceeding and the proposed judgment, and the consideration by the court of the proposed judgment's competitive impact and its impact on the public generally as well as individuals alleging specific injury from the violation set forth in the complaint.

The United States does not believe that the procedures of the APPA are required in this action because the Complaint seeks, and the Final Judgment provides for, only the payment of civil penalties.^{1/} In our view, a consent judgment in a case

^{1/} The Federal Trade Commission challenged the ARCO defendants' acquisition of the Union Carbide defendants' assets and sought injunctive relief in this Court (Civ. No. 90-1657, July 18, 1990). The Commission subsequently entered into a consent agreement with the parties that settled the antitrust (Footnote continued on next page.)

Previously, in United States v. ARA Services, Inc., 1979-2 CCH Trade Case ¶ 62,861 (E.D. Mo.), a consent judgment calling for both equitable relief and civil penalties was approved by the court on August 14, 1979, after the United States had taken the position in APPA proceedings that the civil penalties component of that judgment was not open to public objection. See 44 Fed. Reg. 41583 (July 17, 1979).

There may be circumstances, of course, in which the procedures of the APPA, while not required, would serve the public interest. Thus, in United States v. Coastal Corp., 1985-1 CCH Trade Case ¶ 66,425 (D.D.C.), the United States noted its view that the APPA was not applicable, but chose to employ the APPA procedures, believing that those procedures would in that particular case -- the first brought under the Hart-Scott-Rodino Act -- help describe to the public the circumstances and events that gave rise to the complaint and

(Footnote continued from previous page.)
Corp., Ltd., 1988-1 CCH Trade Cases ¶ 67,967 (D.D.C.); United States v. Trump, 1988-1 CCH Trade Cases ¶ 67,968 (D.D.C.); United States v. Wickes Companies, Inc., 1988-1 CCH Trade Cases ¶ 67,966 (D.D.C.). In each case, the United States noted the issue in a motion for entry of judgment, explaining to the court that it believed the APPA inapplicable.

final judgment. 49 Fed. Reg. 36455 (Sept. 17, 1984).^{4/} There are no circumstances, however, favoring the use of APPA procedures in this case.

For the above reasons, the United States asks the Court to enter the Final Judgment in this case.

Respectfully submitted,



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DATED: January 30, 1991

^{4/} In the only other case involving civil penalties under the Hart-Scott-Rodino Act where APPA procedures were followed, United States v. Bell Resources Ltd., 1986-2 CCH Trade Cases ¶ 67,321 (S.D.N.Y), the complaint sought injunctive relief in addition to civil penalties.

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of January, 1991, I caused a copy of the foregoing Motion for Entry of Judgment to be served by hand delivery on:

Robert E. Jordan, III, Esquire
Steptoe & Johnson
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795

and

William G. Schaefer, Esquire
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