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

UNITED STATES OF AMERICA, Plaintiff,

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Rodino Act during the period from July 18, 1986 through September 2, 1986. Section (g)(l) of the Hart-Scott-Rodino Act, 15 U.S.C. § 16a(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 vn667.nan

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seeks, and the Final Judgment provides for, only the payment of civil penalties. In our view, a consent judgment in a case seeking only monetary penalties is not the type of "consent judgment" Congress had in mind when it passed the APPA. Civil penalties are intended to penalize the defendant for violating the law and, unlike injunctive relief, have no "competitive impact," and no effect on other persons or on the public generally. The legislative history of the APPA does not contain any indication that Congress intended to subject settlements of civil penalty actions to its competitive impact review procedures.l1
Thus, courts to date have not required use of APPA
procedures in cases involving only the payment of civil penalties. For example, a consent judgment for civil penalties under Section 11(1) of the Clayton Act was entered on
November 1, 1983 in United States v. RSR Corp., Civ. No. CA3-83-1828-C (N.D. Tex.), without employing APPA procedures.~1 Previously, in United States v. ARA Services, Inc., 1979-2 CCH Trade Cases ,r62,86l (E.D. Mo.), a consent judgment calling for both equitable relief and civil penalties

11 Civil penalties may also be assessed under Section 11(1) of the Clayton Act. 15 U.S.C. § 21(1), for violation of Federal Trade Commission orders.
~I The United States had noted the issue and explained to the court that it believed the APPA inapplicable. A copy of the RSR Corp. consent judgment is attached hereto.

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For the above reasons. the United States asks the Court to

enter the Final Judgment in this case.

DATED: March 23, 1988

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Respectfully submitted.

ONF. GREANEY
ttorney
U.S. Department of Justice Antitrust Division
555 Fourth Street. N.W. Washington. D.C. 20001 202/724-8310