

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRIAN L. ROBERTS,

Defendant.

Civil Action No. 11 – cv - 02240

**PLAINTIFF’S SUPPLEMENTAL MEMORANDUM**

Pursuant to the Court’s December 20, 2011, Minute Order, Plaintiff, the United States of America, files this Supplemental Memorandum addressing why the entry of the Final Judgment is in the public interest.

The Hart-Scott-Rodino Act, 15 U.S.C. §18a, requires persons acquiring voting securities or assets valued in excess of statutorily set thresholds to file a notification with the Department of Justice and the Federal Trade Commission ( the antitrust enforcement agencies ). This notification requirement serves as an important antitrust enforcement tool by enabling the antitrust enforcement agencies to investigate before the parties consummate their transaction whether these larger acquisitions are likely to lessen competition and harm consumers. Because failure to notify the antitrust enforcement agencies takes away this important enforcement tool and may cause consumer harm that could have been prevented, the Hart-Scott-Rodino Act permits the United States to seek civil penalties for violation of the Act’s notification and

waiting requirements, pursuant to 15 U.S.C. 18a(g)(1).<sup>1</sup>

The antitrust enforcement agencies have settled all prior Hart-Scott-Rodino civil penalty cases via consent decree. Although these settlements are always a matter to be negotiated, the antitrust enforcement agencies have sought

Although the antitrust enforcement agencies have obtained penalties in excess of \$5.6 million and up to 100% of the statutory maximum, the \$500,000 civil penalty agreed upon in this case (representing approximately 6% of the statutory maximum penalty) is consistent with or exceeds the civil penalty dollar amounts (and percentages of the maximum penalty) that the antitrust enforcement agencies obtained in cases such as 2005 WL 2649296, 2005-2 Trade Cas. (CCH) ¶ 74,946 (D.D.C. 2005) (\$350,000 civil penalty, 2% of the maximum); , 1997 U.S. Dist. LEXIS 4653, 1997-1 CCH Trade Cas. (CCH) ¶ 71,766 (D.D.C. 1997) (\$75,000 civil penalty, 2% of the maximum); , 1993 U.S. Dist. LEXIS 19896, 1993-2 Trade Cas. (CCH) ¶ 70,383 (D.D.C. 1993) (\$414,650 civil penalty, 2% of the maximum); and , 1988 WL 101294, 1988-1 Trade Cas. (CCH) ¶ 68,040 (D.D.C. 1988) (\$500,000 civil penalty, 10% of the maximum).

This civil penalty serves as an appropriate punishment, given the facts and circumstances of this violation, and serves as a deterrent to others who might otherwise fail to comply with, or contemplate avoidance of, the notification requirements of the Hart-Scott-Rodino Act and, for these reasons, entry of the Final Judgment in this case is in the public interest.

Dated: December 23, 2011

Respectfully Submitted,

\_\_\_\_\_  
/s/

Roberta S. Baruch  
D.C. Bar No. 269266  
Special Attorney

Kenneth A. Libby  
Special Attorney

Karen Espaldon  
D.C. Bar No. 456714  
Special Attorney

Federal Trade Commission  
Washington, D.C. 20580  
(202) 326-2694