

judgment" submitted by the United States in a civil case filed "under the antitrust laws" be filed with the court at least sixty days in advance of its effective date, published in the Federal Register and a 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.

Because the Complaint seeks, and the proposed Final Judgment provides for, only the payment of civil penalties, the procedures of the APPA are not required in this action. A consent judgment in a case seeking only monetary penalties is not the type of "consent judgment" contemplated by the APPA. Civil penalties are intended to penalize a defendant for violating the law, and, unlike injunctive relief, have no "competitive impact," and no effect on other persons or on the public generally, within the context of the APPA. 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. No court to date has required use of APPA procedures in cases involving only the payment of civil penalties.²

² See, e.g., *United States v. Smithfield Foods, Inc. and Premium Standard Farms, LLC*, 2010-1 Trade Cas. (CCH) ¶ 76,880 (D.D.C.); *United States v. John C. Malone*, 2009-1 Trade Cas. (CCH) ¶ 76,659 (D.D.C.); *United States v. ValueAct Capital Partners, L.P.*, 2008-1 Trade Cas. (CCH) ¶ 75,998 (D.D.C.); *United States v. Iconix Brand Group, Inc.*, 2007-2 Trade Cas. (CCH) ¶ 75,900 (D.D.C.); *United States v. James D. Dondero*, 2007-1 Trade Cas. (CCH) ¶ 75,710 (D.D.C.); *United States v. Qualcomm Inc. and Flarion Tech. Inc.*, 2006-1 Trade Cas. (CCH) ¶ 75,195 (D.D.C.). In each case, the United States noted the issue in a motion for entry of judgment, explaining that the APPA did not apply.

