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Hearst Pays \$4 Million Civil Penalty for Failure to Submit a Complete Hart-Scott-Rodino Filing

Moses Silverman - Didier Malaquin

October 2001



The Department of Justice and Federal Trade Commission have grown increasingly concerned about parties' failures to provide all documents required to be filed pursuant to Item 4(c) of the Hart-Scott-Rodino (HSR) notification form. (This requires the parties to submit all studies, surveys, analyses and reports prepared by or for officers and directors in order to evaluate the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets) On October 11, 2001, the Government filed an action and consent judgment requiring The Hearst Corporation and related entities to pay a \$4 million civil penalty for failure to provide documents required by Item 4(c). This is the largest civil penalty in the history of HSR enforcement and sends a clear warning to the M&A community.

Hearst made an HSR filing in December 1997 in connection with a proposed acquisition of Medi-Span. The Government did not challenge the transaction, and it closed in 1998. Acting on complaints, the FTC subsequently investigated the acquisition and filed a lawsuit challenging it in April 2001. The FTC charged that Hearst acquired a monopoly over a key type of drug information database used by pharmacists, hospitals and health plans.

In their investigation, the FTC received documents that it believed should have been submitted pursuant to Item 4(c) of the HSR notification form but were improperly withheld. At the request of the FTC, the Department of Justice filed a civil penalty action against Hearst on October 11, 2001, charging that Hearst violated the HSR Act by illegally withholding 4(c) documents from the HSR notification it filed. The complaint charges that Hearst's failure to submit documents required by Item 4(c) hindered the ability of the federal antitrust agencies to analyze the competitive effects of the Medi-Span acquisition. According to the complaint, Hearst failed to include in with its HSR filing several documents prepared to evaluate the Medi-Span acquisition and its competitive effects and failed to submit a list of documents responsive to Item 4(c) that were withheld on grounds of privilege.

With the complaint, the Justice Department filed a stipulation and consent judgment providing that Hearst pay an unprecedented civil penalty of \$4 million.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its contents.

Moses Silverman is a partner and Didier Malaquin is counsel in the New York office of Paul, Weiss, Rifkind, Wharton & Garrison.

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