IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA c/o Department of Justice Washington, D.C. 20530, Plaintiff, v. WILLIAM H. GATES III One Microsoft Way Redmond, WA 98052, Defendant.	CASE NUMBER 1:04CV00721 JUDGE: Colleen Kollar-Kotelly DECK TYPE: Antitrust DATE STAMP: 05/03/2004

MOTION FOR ENTRY OF JUDGMENT

Plaintiff, having filed its Complaint in the above-captioned case, and having filed this date a Stipulation and proposed Final Judgment, hereby moves this Court for entry of a Final Judgment against Defendant William H. Gates III ("Defendant"). By agreement of the parties, the Final Judgment against the Defendant provides for the payment of a civil penalty totaling $800,000 by Defendant pursuant to 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 Defendant Gates violated Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act" or "Act"), Section 7A of the Clayton Act, 15 U.S.C. § 18a, which requires certain acquiring persons and certain persons whose voting securities or assets are acquired to file notification with the Department of Justice and the Federal Trade Commission and to observe a waiting period before consummating certain acquisitions of voting securities or assets. The Complaint alleges that Defendant Gates was in

continuous violation of the HSR Act each day during the period beginning on or before May 9, 2002 through August 26, 2002. Under section (g)(1) of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a(g)(1), any person who fails to comply with the Act shall be liable to the United States for a civil penalty of not more than $11,000 for each day during which such person is in violation of the Act.[1] Accordingly, the Complaint seeks "an appropriate civil penalty." As the Stipulation and proposed Final Judgment indicate, Defendant Gates has agreed to pay civil penalties totaling $800,000 within 30 days of entry of the Final Judgment.

The United States does not believe that the procedures of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16 (b)-(h), are required in this action. The APPA 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 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.

The procedures of the APPA are not required in this action because the Complaint seeks, and the Final Judgment provides for, only the payment of civil penalties. In our view, a consent

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[1] The maximum daily civil penalty, which had been $10,000, was increased to $11,000 for violations occurring on or after November 20, 1996, pursuant to the Debt Collection Improvement Act of 1996, Pub. L. 104-134 § 31001(s) and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 61 Fed. Reg. 54548 (Oct. 21, 1996).

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 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.

Thus, courts to date have not required use of APPA procedures in cases involving only the payment of civil penalties. Indeed, courts in this district have consistently entered consent judgments for civil penalties under the HSR Act without employing APPA procedures.[2] There are no circumstances favoring the use of APPA procedures in this case.[3]

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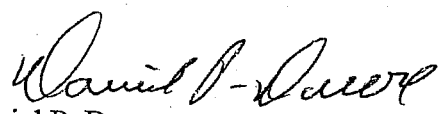
[2] See, e.g., *United States v. The Hearst Trust, 2001-2 Trade Cas.* (CCH) ¶ 73,451 (D.D.C.); *United States v. Input/Output et al.*, 1999-1 Trade Cas. (CCH) ¶ 24,585 (D.D.C.); *United States v. Blackstone Capital Partners II Merchant Banking Fund et al.* 1999-1 Trade Cas. (CCH) ¶ 72,484 (D.D.C.); *United States v. The Loewen Group, Inc.*, 1998-1 Trade Cas. (CCH) ¶ 72,151 (D.D.C.); *United States v. Mahle GMBH et al.*, 1997-2 Trade Cas. (CCH) ¶ 71,868 (D.D.C.); *United States v. Figgie Int'l, Inc.*, 1997-1 Trade Cas. (CCH) ¶ 71,766 (D.D.C.); *United States v. Foodmaker, Inc.*, 1996-2 Trade Cas. (CCH) ¶ 71,555 (D.D.C.); *United States v. Titan Wheel International, Inc.*, 1996-1 Trade Cas. (CCH) ¶ 71,406 (D.D.C.); *United States v. Automatic Data Processing, Inc.*, 1996-1 Trade Cas. (CCH) ¶ 71,361 (D.D.C.); *United States v. Trump*, 1988-1 Trade Cas. (CCH) ¶ 67,968 (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.

[3] In the first case brought under the Hart-Scott-Rodino Act, *United States v. Coastal Corp.*, 1985-1 Trade Cas. (CCH) ¶ 66,425 (D.D.C.), the United States -- noting its view that the APPA was not applicable -- chose to employ the APPA procedures, believing that those procedures would in that particular case help describe to the public the circumstances and events that gave rise to the complaint and final judgment. 49 Fed. 36455 (Sept. 17, 1984). In three other civil penalties case under the HSR Act, APPA procedures were followed: *United States v. Bell Resources Ltd.*, 1986-2 Trade Cas. (CCH) ¶ 67,321 (S.D.N.Y), *United States v. Computer Associates International, Inc. et al.*, 2002-2 Trade Cas. (CCH) ¶ 73,883 (D.D.C.), and *United States v. Gemstar-TV Guide International, Inc.*, 2003-2 Trade Cas. (CCH) ¶ 74,082 (D.D.C). In each of these cases, the complaint sought injunctive relief in addition to civil penalties.

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

Dated: May 3, 2004

Respectfully submitted,



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