

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____)	
UNITED STATES OF AMERICA,)	
)	
and)	
)	
STATE OF ILLINOIS)	
)	
and)	
)	
STATE OF NEW YORK)	
)	
and)	
)	
COMMONWEALTH OF MASSACHUSETTS)	
)	
<i>Plaintiffs,</i>)	
)	Case Number 05 CV 10722 (KW)
v.)	
)	Judge: Hon. Kimba M. Wood
MARQUEE HOLDINGS, INC.)	
)	
and)	
)	
LCE HOLDINGS, INC.)	
)	
<i>Defendants.</i>)	
_____)	

PLAINTIFF UNITED STATES MOTION AND MEMORANDUM
FOR ENTRY OF FINAL JUDGMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (“APPA”), plaintiff United States of America (“United States”) moves for entry of the proposed Final Judgment filed in this civil antitrust proceeding. The Final Judgment may be entered at this time without further hearing if the Court determines that entry is in the public interest. The Competitive Impact Statement, filed in this matter on December 22, 2005, explains

why entry of the proposed Final Judgment would be in the public interest. The United States is filing simultaneously with this Motion and Memorandum a Certificate of Compliance setting forth the steps taken by the parties to comply with all applicable provisions of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (“APPA”) and certifying that the statutory waiting period has expired.

I. Background

On December 22, 2005, the United States and the plaintiff states filed a civil antitrust Complaint alleging that the acquisition of LCE Holdings, Inc. (“Loews”) by Marquee Holdings, Inc. (“AMC”) would substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The Complaint alleges that AMC and Loews were two of only a few, and in several cases only, first-run, commercial theatres in parts of New York City, Chicago, Boston, Dallas, and Seattle (“relevant markets”). As alleged in the Complaint, the transaction would remove a significant competitor in an already highly concentrated and difficult-to-enter first-run, commercial theatre market, which would have substantially lessened competition in the relevant markets, thereby harming consumers. Accordingly, the Complaint seeks to prevent the anticompetitive effects of the acquisition by requesting, among other things: (1) a judgment that the acquisition, if consummated, would violate Section 7 of the Clayton Act and (2) relief that enjoins the parties from consummating the merger.

At the same time the Complaint was filed, a proposed Final Judgment (“Judgment”), which is designed to eliminate the anticompetitive effects of the acquisition, Competitive Impact Statement, and Hold Separate Stipulation and Order (“Hold Separate Order”) were also filed. Defendant AMC was allowed to consummate its acquisition of Loews, but defendants were

required within 120 days after the filing of the Complaint, or five days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest, as viable business operations, certain theatres in the relevant markets (“Theatre Assets”). If defendants do not complete the divestitures within the prescribed time, then, under the terms of the proposed Final Judgment, this Court will appoint a trustee to sell the Theatre Assets. The Hold Separate and proposed Final Judgment require defendant AMC to preserve, maintain and continue to operate the Theatre Assets in the ordinary course of business, including reasonable efforts to maintain and increase sales and revenues. The Competitive Impact Statement explains the basis for the Complaint and the reasons why entry of the proposed Final Judgment would be in the public interest.

Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Compliance with the APPA

The APPA requires a sixty-day period for the submission of public comments on the proposed Final Judgment, 15 U.S.C. § 16(b). In this case, the comment period terminated on March 21, 2006, and the United States received no public comments. The United States has filed a Certificate of Compliance simultaneously with this Motion and Memorandum that states all the requirements of the APPA have been satisfied. It is now appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the Final Judgment.

III. Standard of Judicial Review

Before entering the proposed Final Judgment, the Court is to determine whether the Judgment “is in the public interest.” 15 U.S.C. § 16(e). In making that determination, the Court

may consider:

- 1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
- 2) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e).

In its Competitive Impact Statement previously filed with the Court on December 22, 2005, the United States explained the meaning and proper application of the public interest standard under the APPA and now incorporates those statements herein by reference. The public, including affected competitors and customers, has had the opportunity to comment on the proposed Final Judgment as required by law. There has been no showing that the proposed settlement constitutes an abuse of the United States' discretion or that it is not within the zone of settlements consistent with the public interest.

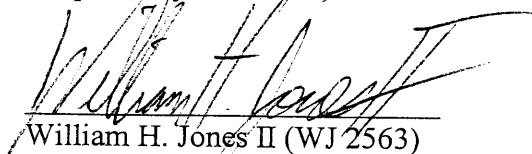
IV. Conclusion

For the reasons set forth in this Motion and Memorandum and in the Competitive Impact Statement, the Court should find that the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment without further hearings.

The United States respectfully requests that the proposed Final Judgment be entered as soon as possible.

Dated: May 16, 2006

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William H. Jones II", is written over a horizontal line.

William H. Jones II (WJ 2563)

Avery W. Gardiner (AG 2011)

U.S. Department of Justice

Antitrust Division, Litigation III Section

Liberty Place Building

325 7th Street, NW, Suite 300

Washington, DC 20530

(202) 514-0230

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

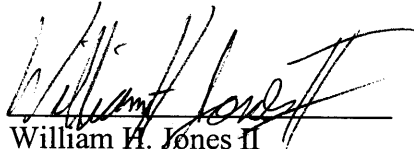
I, William H. Jones II, hereby certify that on May 16, 2006, I caused copies of the foregoing Motion and Memorandum for Entry of Final Judgment to be served by overnight delivery service sending them via FedEx to duly authorized legal representatives of those parties, as follows:

Counsel for Defendant Marquee Holdings, Inc.

Damian Didden, Esq.
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

Counsel for Defendant LCE Holdings, Inc.

Deborah L. Feinstein, Esq.
Arnold & Porter
555 Twelfth Street NW
Washington, DC 2004-1206


William H. Jones II
U.S. Department of Justice
Antitrust Division
Liberty Place Building
325 7th Street, NW, Suite 300
Washington, DC 20530
Telephone No.: (202) 514-0230