

**N THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil No: 1:01CV01237 (GK)
v.)	
)	Filed: March 28, 2002
3D SYSTEMS CORPORATION and)	
DTM CORPORATION,)	Judge: Kessler
)	
Defendants.)	
)	

PLAINTIFF’S MOTION FOR ENTRY OF FINAL JUDGMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (“APPA”), 15 U.S.C. §§ 16 (b)-(h), the United States of America moves for entry of the proposed Final Judgment 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 September 4, 2001 explains why entry of the proposed Final Judgment would be in the public interest. A Certificate of Compliance setting forth the steps taken by the parties to comply with all applicable provisions of the APPA and certifying that the statutory waiting period has expired has been filed simultaneously with this motion.

I. BACKGROUND

On June 6, 2001, plaintiff filed a Complaint alleging that the proposed acquisition of DTM Corporation (“DTM”) by 3D Systems Corporation (“3D”) would substantially lessen competition

in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that 3D and DTM are two of only three firms that produce industrial rapid prototyping ("RP") systems in the United States. Stereolithography ("SL") technology, utilized by 3D, forms a three-dimensional object through radiation from a liquid, photocurable material. DTM's RP systems use laser sintering ("LS") technology to heat and form a sinterable powder into a three-dimensional object. Both 3D and DTM hold extensive patent portfolios related to RP systems production. These patents have prevented firms that sell RP systems abroad from competing in the United States. The Complaint also alleges that the transaction will substantially lessen competition in the development, production and sale of industrial RP systems sold in the United States, thereby harming consumers. Accordingly, the Complaint asks the Court to issue (1) a judgment that the proposed acquisition of DTM by 3D would violate Section 7 of the Clayton Act, 15 U.S.C. § 18; and (2) permanent injunctive relief that would prevent defendants from carrying out the acquisition or otherwise combining their operations.

After this suit was filed, plaintiff and defendants reached a proposed settlement that permits 3D to complete its acquisition of DTM, while preserving competition in the market for industrial RP systems by requiring defendants to license their RP-related patent portfolios. A Stipulation and proposed Final Judgment embodying the settlement were filed with the Court on August 16, 2001.

The proposed Final Judgment orders 3D and DTM to grant a license to develop, manufacture and sell, and to supply any support or maintenance services for, products under the defendants' RP patent portfolios within a limited field of use matching either 3D's or DTM's technology. The licensee, to be approved by plaintiff, must be a firm that currently manufactures

industrial RP systems, utilizing either the LS or SL technology. Defendants must complete the divestiture five (5) days after notice of entry of the Final Judgment by the Court. Plaintiff may extend the time period for divestiture for up to sixty (60) days. If defendants do not complete the divestiture within the prescribed period, the Court is to appoint a trustee to accomplish the divestiture.

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. 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 compliance with the APPA, the United States filed a Competitive Impact Statement (“CIS”) on September 4, 2001. The proposed Final Judgment and the CIS were published in the Federal Register on September 26, 2001, and in the Washington Post during the period September 17 - 23, 2001. In light of the recent disruptions to mail delivery, the United States published a supplemental notice in the Federal Register on December 21, 2001 and in the Washington Post from December 20 - 26, 2001, extending the comment period by fifteen days. The comment period, together with the extension, have now expired, with the United States having received five public comments. The United States filed its Response to Public Comments and the comments themselves with this Court on February 15, 2002, and published the Response and the public comments in the Federal Register on March 12,

2002. The Certificate of Compliance filed simultaneously with this Motion recites that all the requirements of the APPA have now been satisfied. It is therefore 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 that 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 or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment; and

(2) the impact of entry of such judgment 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, plaintiff has explained the meaning and proper application of the public interest 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 Justice Department’s 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 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 Final Judgment will remedy the anticompetitive effects of the acquisition by introducing a new competitor into the market. The sooner this new competitor can begin competing, the more effective will be the remedy. Therefore, plaintiff respectfully requests that the proposed Final Judgment annexed hereto be entered as soon as possible.

Dated: March 28, 2002

Respectfully submitted,

_____/s/_____
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CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing Motion for Entry of Final Judgment to be served by mail and facsimile transmission, this 28th day of March, 2002, upon the following counsel of record for defendant 3D Systems Corporation:

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