

**Statement of
Commissioners Sheila F. Anthony and Mozelle W. Thompson**

**The Hearst Trust *et al.*
File No. 991-0323**

The Commission today voted to accept a settlement with The Hearst Corporation, The Hearst Trust, and First DataBank, Inc. (collectively, "Hearst") to resolve pending federal court litigation. The Commission's April 5, 2001 complaint sought divestiture and the disgorgement of monopoly profits realized by Hearst as a result of its 1998 acquisition of Medi-Span, Inc. The proposed Final Order we approved today, which will be submitted to the court expeditiously, requires Hearst to consummate the divestiture of the former Medi-Span business, and also to disgorge a hefty \$19 million in illegally-obtained profits. The disgorged profits will be distributed directly to customers who paid monopoly prices as a result of Hearst's acquisition of Medi-Span, pursuant to allocation and distribution plans entered into as part of a related private class action settlement.⁽¹⁾

At the time the Commission voted to authorize the complaint against Hearst, we indicated that we thought the Commission should seek disgorgement as a remedy in competition cases only in exceptional circumstances.⁽²⁾ We believed then - and we continue to believe - that Hearst's conduct was sufficiently egregious to justify the extraordinary remedy of disgorgement. Moreover, absent disgorgement, the divestiture of the Medi-Span assets alone might have allowed Hearst to profit from its unlawful behavior. Such a result would be untenable, not only because it would be insufficient to restore the competitive *status quo*, but also because it would deny a remedy to injured customers.

There is no question that disgorgement is a remedy available to the Commission.⁽³⁾ The only issue is whether such a remedy is appropriate here. Based on the facts in this case, disgorgement provides the best means to ensure that aggrieved customers will be compensated for their injuries.

Endnotes:

1. In another related action, acting at the request of the Commission, the U.S. Department of Justice obtained a record-setting \$4 million civil penalties judgment against Hearst, settling charges that Hearst violated premerger notification law when it failed to include required documents in its Hart-Scott-Rodino filing for the acquisition of Medi-Span. FTC press release, "The Hearst Corporation Settles Charges of Filing Incomplete Pre-merger Report (Oct. 11, 2001), available at <<http://www.ftc.gov/opa/2001/10/hearst.htm>>. It is worth noting, however, that Hearst's \$4 million civil penalties payment will not flow directly to consumers injured by Hearst's acquisition of Medi-Span. Rather, the payment will go into the U.S. Treasury.

2. The Hearst Trust *et al.*, Statement of Chairman Pitofsky and Commissioners Sheila F. Anthony and Mozelle W. Thompson (April 4, 2001), available at <<http://www.ftc.gov/os/2001/04/hearstpitanthom.htm>>.

3. *FTC v. Mylan Laboratories Inc., et al.*, 62 F.Supp.2d 25, 37 (D.D.C. 1999).