



## Federal Trade Commission Protecting America's Consumers

Release Date: December 14, 2001

### Hearst Corp. To Disgorge \$19 Million and Divest Business to Facts and Comparisons to Settle FTC Complaint

The Federal Trade Commission today announced a proposed settlement with Hearst Corporation (Hearst) that would resolve charges that Hearst unlawfully acquired J.B. Laughery, Inc., which included the Medi-Span integratable drug information database business. Under the terms of the settlement, Hearst will divest the former Medi-Span business and pay \$19 million as disgorgement of unlawful profits. The settlement will be presented to the federal district court for entry of a final judgment.

The settlement marks the first time the Commission has sought either divestiture or disgorgement of profits in a federal court action for a consummated merger. The Commission alleged that the merger violated Section 7A of the Clayton Act, Section 7 of the Clayton Act, and Section 5 of the FTC Act.

The Commission alleged that Hearst violated Section 7A of the Clayton Act when, in its requisite pre-merger filing with the antitrust agencies, it illegally omitted several high-level corporate documents prepared to evaluate the Medi-Span acquisition and its competitive effects. Hearst was required to provide those documents to the antitrust agencies to help them determine whether a full pre-merger antitrust review of the acquisition was necessary; its failure to submit those documents hindered the ability of the Commission to analyze the competitive effects of the acquisition prior to consummation. In its complaint, the Commission further alleged that this transaction substantially lessened competition in the integrated drug information database market, in violation of Section 7 of the Clayton Act and Section 5 of the FTC Act. The allegations are contained in the Commission's April 5, 2001, complaint. (See news release dated [April 5, 2001](#); *Federal Trade Commission v. The Hearst Trust et al.*, Civil Action No. 1:01CV00734 (D.D.C.) J. Jackson.)

Hearst will divest the Medi-Span business to Facts and Comparisons, a St. Louis based business unit owned by Wolters Kluwer, n.v., through its American subsidiary, Lippincott Williams & Wilkins, Inc., a Delaware corporation. Facts and Comparisons produces widely used print, Internet and CD ROM materials concerning pharmaceuticals. These publications are used as more in-depth reference materials by many of the customers of the integrated databases.

"The divestiture of the Medi-Span database to Facts and Comparisons should provide an added dimension to competition in the database market given the expertise of Facts and Comparisons in the drug business," said Susan Creighton, Deputy Director of the FTC's Bureau of Competition. "Competition will be further enhanced by requiring First DataBank to allow its customers to terminate their contracts with First DataBank and sign up with Facts and Comparisons or any other firm that offers database services," she said.

The integratable drug information database, formerly owned and maintained by Medi-Span, is one of the two databases that pharmacies, hospitals, doctors, third-party payers, and patients rely on to obtain information about drug prices, drug effects, drug interactions and the eligibility for drugs under various payment plans. The only other commonly used database is owned by Hearst's subsidiary, First DataBank. As a result, the January 1998 acquisition of Medi-Span by Hearst created a monopoly in the sale of integratable drug information databases. First DataBank used that monopoly power to substantially increase prices to all database customers.

The order also provides direct relief for those customers who were forced to pay monopoly prices for the database products. It requires Hearst to disgorge \$19 million of profits obtained as a result of its unlawful acquisition of Medi-Span. According to a plan approved by the FTC, these funds will be distributed to injured customers as part of the settlement of a private class action suit alleging unlawful overcharges by Hearst.

The Hearst Corporation and The Hearst Trust are headquartered in New York City, and First DataBank, Inc. is headquartered in San Bruno, California. Facts and Comparisons, headquartered in St. Louis, Missouri, is an unincorporated division of Lippincott Williams & Wilkins, Inc., which is a Delaware corporation and subsidiary of Wolters Kluwer, n.v., a Dutch corporation.

The Commission vote to approve the settlement and direct staff to move entry of the final judgment before the Federal District Court was 5-0, with Commissioners Sheila Anthony and Mozelle Thompson issuing a joint separate statement, Commissioner Orson Swindle issuing a separate statement, and Commissioner Thomas B. Leary issuing a separate statement concurring in part and dissenting in part. Each is available on the FTC's Web site and is summarized below. The judgment will not become final until it is signed and entered by the District Judge.

The statement by Commissioners Anthony and Thompson noted that, while "the Commission should seek disgorgement as a remedy in competition cases only in exceptional circumstances . . . Hearst's conduct was sufficiently egregious to justify the extraordinary remedy of disgorgement" in this case. Anthony and Thompson said that "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."

In his separate statement, Commissioner Swindle said: "Although I am largely satisfied with the relief obtained in this case, I agree with Commissioner Leary that the disgorgement aspect of the remedy largely confirms the concerns that we expressed last April, when the Commission decided to terminate settlement negotiations and proceed in federal court under Section 13(b) of the Federal Trade Commission Act. . . . One thing seems clear: because the Commission's \$19 million in disgorgement will be subtracted from the at least \$26 million obtained against defendants by class action plaintiffs, the Commission's months-long pursuit of disgorgement has yielded a monetary recovery that adds no real value to the private remedy. . . . As my vote in favor of the *Mylan* [FTC v. *Mylan Laboratories, Inc.*] settlement indicates, I support -- and believe that there is a statutory basis for -- the Commission's efforts to obtain disgorgement in appropriate competition matters. In the present case, however, I continue to think that the decision to seek disgorgement was incorrect and that the remedy that the Commission has obtained may not be the most that we could have achieved."

Commissioner Leary, in his statement, said, "I dissent . . . from the portion of the proposed Final Order that requires Hearst to pay \$19 million for disgorgement of profits. I do not go so far as to say that disgorgement should never be sought in an antitrust case. This particular case, however, is a classic example of a situation where the remedy is unnecessary, if not affirmatively harmful. This case could probably have been settled by the Commission with payment of civil penalties substantially larger than those that have been paid in this situation. These civil penalties, for violations of the Hart-Scott-Rodino premerger notification requirements, would be levied on top of any amounts that the parties would have to pay out in private damages cases. The \$19 million the Commission obtained in disgorgement will be turned over to plaintiffs' counsel and included in the \$26 million plus funds distributed to eligible parties in the private class action lawsuits."

Copies of the proposed settlement are posted on the FTC's Web site at: [www.ftc.gov](http://www.ftc.gov). The FTC's Bureau of Competition seeks to prevent business practices that restrain competition. The Bureau carries out its mission by investigating alleged law violations and, when appropriate, recommending that the Commission take formal enforcement action. To notify the Bureau concerning particular business practices, call or write the Office of Policy and Evaluation, Room 394, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Ave, N.W., Washington, D.C. 20580, Electronic Mail: [antitrust@ftc.gov](mailto:antitrust@ftc.gov); Telephone (202) 326-3300. For more information on the laws that the Bureau enforces, the Commission has published "Promoting Competition, Protecting Consumers: A Plain English Guide to Antitrust Laws," which can be accessed at <http://www.ftc.gov/bc/compguide/index.htm>.

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**Related Documents:**

***FTC v. The Hearst Trust, The Hearst Corporation, and First DataBank, Inc.*** (District Court for the District of Columbia), Civ. No.1:01CV00734

[Stipulation](#) For Entry of Final Order and Stipulated Permanent Injunction [PDF 9K ]

[Final Order](#) and Stipulated Permanent Injunction [PDF 61K]

[Exhibit F](#): Monitor Agreement Between Defendants And Richard Shermer (Dated November 2, 2001) [PDF 352K]

[Statement](#) of Commissioners Sheila F. Anthony and Mozelle W. Thompson

[Statement](#) of Commissioner Orson Swindle

[Statement](#) of Commissioner Thomas B. Leary Concurring in Part and Dissenting in Part

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Last Modified: Monday, June 25, 2007