proposed Consent Decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy of the first Consent Decree (the ''Drum'' Decree), please enclose a check in the amount of $7.00 (25 cents per page for reproduction costs), payable to the Consent Decree Library. In requesting a copy of the second Consent Decree (the ''IPC Customer'' Decree), please enclose a check in the amount of $6.25 (25 cents per page for reproduction costs), payable to the Consent Decree Library. In requesting a copy of both Consent Decrees, please enclose a check in the amount of $13.25 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–4282 Filed 2–21–95; 8:45 am]

BILLING CODE 4410–01–M

Consent Decree Pursuant to the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Taylor Lumber & Treating, Inc.*, Civil Action No. 93–858–JO was lodged on February 8, 1995, with the United States District Court for the District of Oregon. The Consent Decree settles the claims alleged against defendant, Taylor Lumber & Treating, Inc. (''Taylor'') in this action.

The Complaint was brought against Taylor pursuant to section 3008 (a), (g), and (h) of the Resource Conservation and Recovery Act (''RCRA''), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6928 (a), (g), and (h), for alleged violations associated with Taylor's owning and operating a land disposal facility where hazardous waste was stored and/or disposed of without a permit or interim status authorization (''the concrete vault''). The Complaint sought an order that Taylor pay a civil penalty for violations associated with its storage and/or disposal of hazardous waste in the concrete vault, complete closure of the concrete vault in accordance with Oregon's regulations, and perform corrective action at its facility located near Sheridan, Oregon to address releases of hazardous constituents and hazardous wastes into the environment.

Under the terms of the proposed Consent Decree, Taylor will complete closure of the concrete vault in accordance with Oregon's regulations, conduct a RCRA Facility Investigation and perform corrective action at its facility to address releases of hazardous constituents and hazardous wastes into the environment, and pay a civil penalty of $70,000 for the violations associated with the concrete vault.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Taylor Lumber & Treating, Inc.*, DOJ Ref. 1#90–7–1–667.

The proposed Consent Decree may be examined at the office of the United States Attorney, 312 U.S. Courthouse, 620 SW Main Street, Portland, Oregon 97205; the Region 10 Office of EPA, 7th Floor Records Center, 1200 Sixth Avenue, Seattle, WA 98101; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $28.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–4281 Filed 2–21–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

United States of America v. Playmobil USA, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* versus *Playmobil USA, Inc.*, Civil Action No. 95–0214. The Complaint alleged that Playmobil engaged in a combination and conspiracy with dealers to fix the price of children's toys in violation of section 1 of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment that Playmobil has agreed to prohibits it for a period of ten years from (A) agreeing with any dealer to fix or maintain the resale prices at which Playmobil's products may be sold; (B) discussing or encouraging adherence to Playmobil's suggested resale prices; (C) threatening to terminate or retaliate against a dealer for discounting; and (D) communicating information to any dealer relating to the termination of any other dealer due to discounting. Additionally, for five years Playmobil is barred from (E) terminating any dealer or taking any other action for reasons relating to that dealer's discounting of Playmobil products; (f) announcing that it will adopt any resale pricing policy under which a dealer may be terminated because of discounting; (G) acting, or representing that it will act, upon a dealer's complaint of another dealer's discounting; and (H) establishing any cooperative advertising policy that denies or reduces advertising allowances for any reason related to a dealer's advertised discount prices. These prohibitions are discussed more fully in the Competitive Impact Statement.

Playmobil is also required to appoint an antitrust compliance officer and establish an antitrust compliance program. This program is designed to inform Playmobil employees and agents about the consent decree and the antitrust laws, thereby helping to prevent future violations.

Public comment is invited within the statutory 60-day comment period. Such comments and responses to them will be published in the **Federal Register** and filed with the Court. Comments should be directed to Rebecca P. Dick, Chief, Civil Task Force I, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW., Room 3700, Washington, DC 20530 (telephone: 202/514–8368).

Constance K. Robinson,

Director of Operations, Antitrust Division.

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. Playmobil USA, Inc., 11 E. Nicholas Court, Dayton, NY 08810. Defendant.

Case Number 1:95CV00214
Judge: James Robertson
Deck Type: Antitrust
Date Stamp: 01/31/95

Complaint

The United States of America, plaintiff, by its attorneys acting under the direction of the Attorney General of the United States, brings this civil action against the above-named

defendant and complains and alleges as follows:

I.

Jurisdiction and Venue

1. This complaint is filed under section 4 of the Sherman Act, as amended (15 U.S.C. 4), in order to prevent and restrain violations, as hereinafter alleged, by the defendant of section 1 of the Sherman Act (15 U.S.C. 1). This court has jurisdiction over this matter pursuant to 28 U.S.C. 1331 and 1337.

2. Defendant transacts business and is found in the District of Columbia.

II.

Definitions

3. ''Person'' means any individual, corporation, partnership, company, sole proprietorship, firm or other legal entity.

4. ''Dealer'' means any person not wholly owned by defendant who has at any time purchased or acquired Playmobil products for resale, excluding any person who did not purchase or acquire Playmobil products directly from Playmobil or its agents.

5. ''Playmobil product'' means any product sold or distributed by defendant for resale in the United States.

III.

Defendant and Co-Conspirators

6. Playmobil USA, Inc. (''Playmobil'') is made a defendant herein. Playmobil is a corporation headquartered in the District of New Jersey, organized and existing under the laws of the State of New Jersey.

7. Various companies and individuals who are dealers, not made defendants in this complaint, have been induced to participate by and have participated with the defendant in the offense charged herein and performed acts and made statements in furtherance of it.

IV.

Trade and Commerce

8. Playmobil is a prominent seller of specialty toys for children in the United States. Playmobil products are manufactured by Playmobil's parent company, Geobra Brandstatter GmbH & Co., KG., in Germany and sold and distributed in the United States by Playmobil.

9. Playmobil sells substantial quantities of Playmobil products to dealers throughout the United States, which in turn resell Playmobil products to consumers.

10. During the period covered by this complaint, there has been a continuous and uninterrupted flow in interstate commerce of Playmobil products from Playmobil's facilities in New Jersey to dealers throughout the United States. The activities of the defendant and its co-conspirators, as hereinafter described, have been within the flow of, and have substantially affected, interstate commerce.

V.

Violation Alleged

11. Beginning at least as early as February, 1990, and continuing at least through August, 1994, the exact dates being unknown to the United States, the defendant and its co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of section 1 of the Sherman Act, as amended (15 U.S.C. 1). This unlawful combination and conspiracy will continue or may be renewed unless the relief prayed for herein is granted.

12. The combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and its co-conspirators to fix and maintain the resale price of Playmobil products at the amount set by the defendant, Playmobil.

13. In furtherance of this combination and conspiracy, the defendant did the following things, among others:

(a) Established and communicated to dealers minimum resale prices for Playmobil products;

(b) Threatened to terminate dealers for selling or advertising Playmobil products at prices below defendant's minimum resale prices;

(c) Used threats of termination to secure dealers' adherence to defendants' minimum resale prices and to limit the duration of promotional sales by dealers;

(d) Enforced adherence to minimum resale prices at the behest of dealers in order to stop ''price wars'' among them; and

(e) Agreed with dealers on the retail prices for Playmobil products to be charged by the dealers.

VI.

Effects

14. The aforesaid combination and conspiracy has had the following effects, among others:

(a) Resale prices of children's toys have been fixed and maintained; and

(b) Competition in the sale of children's toys by dealers has been restrained, suppressed, and eliminated.

VII.

Prayer for Relief

Wherefore, plaintiff prays:

1. That the Court adjudge and decree that the defendant has combined and conspired to restrain interstate trade and commerce of Playmobil products in violation of section 1 of the Sherman Act.

2. That the defendant, its officers, directors, agents, employees and successors and all other persons acting or claiming to act on their behalf be enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining, or renewing the combination and conspiracy herein before alleged, or from engaging in any other combination, conspiracy, contract, agreement, understanding or concern of action having a similar purpose or effect, and from adopting or following any practice, plan, program, or device having a similar purpose or effect.

3. That plaintiff have such other relief as the Court may deem just and proper.

4. That plaintiff recover the costs of this action.

Anne K. Bingaman,
Assistant Attorney General
Robert E. Litan,
Mark C. Schechter,
Rebecca P. Dick,
Bruce K. Yamanaga,
Andrew S. Cowan,
Steven Semeraro,]
D.C. Bar No. 419612, Attorneys, Department of Justice Antitrust Division, Civil Task Force, 1401 H Street, NW., Room 3700, Washington, DC. 20530, (202) 514–8368.

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. Playmobil USA, Inc., Defendant.

Civil Action No. 95–0214

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties to this Stipulation consent that a Final Judgment in the form attached may be filed and entered by the Court, upon any party's or the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before entry of the proposed Final Judgment by serving notice on the defendant and by filing that notice with the Court.

2. If plaintiff withdraws its consent or the proposed Final Judgment is not

entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and its making shall be without prejudice to any party in this or any other proceedings.

For the plaintiff:

Anne K. Bingaman

Assistant Attorney General

Robert E. Litan,

Mark Schechter,

Rebecca P. Dick,

Bruce K. Yamanaga,

Andrew S. Cowan,

Attorneys, U.S. Department of Justice, Antitrust Division, Civil Task Force, 1401 H Street, NW., Room 3700, Washington, DC. 20530, (202) 514–8368.

For the defendant:

Eugene J. Meigher,

Counsel for Playmobil, USA, Inc.

Certificate of Service

I certify that, on this day January 31, 1995, I have caused to be served, by messenger, a copy of the foregoing Stipulation, Final Judgment and Competitive Impact Statement on counsel of record for Playmobil USA, Inc. at the address below:

Eugene Meigher, Arent, Fox 1050 Connecticut Ave NW., 5th Floor, Washington, DC 20036

Andrew S. Cowan

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. Playmobil USA, Inc., Defendant.

Civil Action No. 95–0214

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on _____, and plaintiff and defendant, Playmobil, USA, Inc., having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without the Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And whereas defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, adjudged and decreed as follows:

I.

Jurisdiction

This Court has jurisdiction of the subject matter of this action and of the party consenting hereto. The complaint states a claim upon which relief may be granted against defendant under Section 1 of the Sherman Act (15 U.S.C. 1).

II.

Definitions

As used in this Final Judgment:

A. ''Cooperative advertising policy'' means any policy or program under which defendant provides a dealer with any rebate, allowance, or reimbursement that relates to that dealer's advertising of Playmobil products.

B. ''Dealer'' means any person not wholly owned by defendant who has at any time purchased or acquired Playmobil products for resale, excluding any person who did not purchase or acquire Playmobil products directly from Playmobil or its agents.

C. ''Discount'' means to offer, sell or advertise any Playmobil product for resale at a price below defendant's suggested resale price.

D. ''Person'' means any individual, corporation, partnership, company, sole proprietorship, firm or other legal entity.

E. ''Playmobil product'' means any product sold or distributed by defendant for resale in the United States.

F. ''Promotional event'' means a sale of offering of limited duration during which a dealer discounts a Playmobil product.

G. ''Resale price'' means any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit relating to Playmobil products sold by dealers.

H. ''Suggested resale price'' means any resale price level, including those related to everyday pricing or promotional pricing, that is suggested, endorsed, communicated, distributed or determined by defendant.

I. ''Terminate'' means to refuse to continue selling, either permanently or temporarily, any or all Playmobil products to a dealer.

III.

Applicability

A. This Final Judgment applies to defendant and to each of its officers, directors, agents, employees, subsidiaries, successors, and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendant shall require, as a condition of the sale of all or substantially all of its assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

IV.

Prohibited Conduct

A. Defendant is hereby enjoined and restrained from directly or indirectly entering into, adhering to, maintaining, furthering, enforcing or claiming any right under any contract, agreement, understanding, plan or program with any dealer to fix, stabilize, or maintain the resale prices at which defendant's products may be sold or offered for sale in the United States by any dealer.

B. Defendant is further enjoined and restrained from (1) discussing, explaining, or encouraging adherence to defendant's suggested resale prices with any dealer, (2) threatening or warning any dealer that it may be terminated or otherwise subjected to any action by the defendant for discounting, and (3) communicating to any dealer information relating to any actual or contemplated termination of any other dealer for any reason related to discounting.

C. Defendant is further enjoined and restrained for a period of five (5) years from the date of entry of the final judgment from directly or indirectly announcing to the public or to any present or potential dealer of its products that defendant has or is adopting, promulgating, suggesting, announcing or establishing any resale pricing policy for Playmobil products that: (1) Provides that defendant will sell only to a dealer that prices at or above suggested resale prices; (2) provides that defendant may or will terminate, or take any other action related to, a dealer for discounting; or (3) relates to the duration or frequency of any dealer's promotional events.

D. Defendant is further enjoined and restrained for a period of five (5) years from the date of entry of the final judgment from (1) representing that it will act on any complaint or communication from a dealer that relates to any other dealer's discounting, (2) discussing any such complaint or communication with the complaining dealer, except that defendant may state that it does not accept dealer complaints or communications that relate to the pricing practices of other dealers, and (3) terminating any dealer or taking any other action for reasons relating to that dealer's discounting.

E. Defendant is further enjoined and restrained for a period of five (5) years from the date of entry of the final judgment from adopting, promulgating, suggesting, announcing or establishing any cooperative advertising policy that denies or reduces advertising rebates, allowances or reimbursements to a

dealer for any reason related to that dealer's advertised prices.

F. Nothing in this Section IV shall prohibit defendant from (1) establishing suggested resale prices and communicating these prices to dealers, provided that such communications also state that these prices are only suggested prices and that dealers are free to adopt any resale price that they choose, or (2) terminating any dealer for reasons unrelated to that dealer's discountings.

V.

Notification Provisions

Defendant is ordered and directed:

A. To send a written notice, in the form attached as Appendix A to this Final Judgment, and a copy of this Final Judgment, within sixty (60) days of the entry of this Final Judgment, to each dealer who purchased Playmobil products in 1993 or 1994.

B. To send a written notice, in the form attached as Appendix A to this Final Judgment, and a copy of this Final Judgment, to each dealer who purchases products from defendant within ten (10) years of entry of this Final Judgment and who was not previously given such notice. Such notice shall be sent within thirty (30) days after the first shipment of Playmobil products to such dealer.

VI.

Compliance Program

Defendant is ordered to establish and maintain an antitrust compliance program which shall include designating, within 30 days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for implementing the antitrust compliance program and achieving full compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, be responsible for the following:

A. Furnishing a copy of this Final Judgment within thirty (30) days of entry of the Final Judgment to each of defendant's officers and directors and each of its employees, salespersons, sales representatives, or agents whose duties include supervisory or direct responsibility for the sale or advertising of Playmobil products in the United States, except for employees whose functions are purely clerical or manual;

B. Distributing in a timely manner a copy of this Final Judgment to any owner, officer, employee or agent who succeeds to a position described in Section VI (A);

C. Providing each person designated in Sections VI (A) or (B) with a written explanation in plain language of this Final Judgment, with examples of conduct prohibited by the Final Judgment and with instructions that each person designated in Section VI (A) and (B) shall report any known violations of the Final Judgment to the Antitrust Compliance Officer;

D. Arranging for an annual oral briefing to each person designated in Sections VI (A) or (B) on the meaning and requirements of this Final Judgment and the antitrust laws, accompanied by a written explanation of the type described in Section VI. (C);

E. Obtaining (1) from each person designated in Sections VI (A) or (B) certification that he or she has read, understands and agrees to abide by the terms of this Final Judgment and is not aware of any violation of the Final Judgment that has not been reported to the Antitrust Compliance Officer; and (2) from each officer, director and employee certification that he or she understands that failure to comply with this Final Judgment may result in conviction for criminal contempt of court.

F. Maintaining (1) a record of all certifications received pursuant to Section VI (E); (2) a file of all documents related to any alleged violation of this Final Judgment; (3) a record of all communications related to any such violation, which shall identify the date and place of the communication, the persons involved, the subject matter of the communication, and the results of any related investigation; and (4) a list of all persons terminated as dealers, or threatened with termination, after the effective date of this Final Judgment and all documents related to any such termination or threatened termination.

VII.

Certification

A. Within 75 days of the entry of this Final Judgment, defendant shall certify to plaintiff whether the defendant has designated an Antitrust Compliance Officer and has distributed the Final Judgment in accordance with Section VI (A) above.

B. For ten years after the entry of this Final Judgment, on or before its anniversary date, the defendant shall file with the plaintiff an annual statement as to the fact and manner of its compliance with the provisions of Sections V and VI.

C. If defendant's Antitrust Compliance Officer learns of any violations of any of the terms and conditions contained in this Final Judgment, defendant shall immediately notify the plaintiff and forthwith take appropriate action to terminate or modify the activity so as to comply with this Final Judgment.

VIII.

Plaintiff Access

A. For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of plaintiff shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant, be permitted, subject to any legally recognized privilege:

1. Access during the defendant's office hours to inspect and copy all records and documents in the possession or under the control of defendant, which may have counsel present, relating to any matters contained in this Final Judgment; and

2. To interview the defendant's officers, employees and agents, who may have counsel present, regarding any such matters. The interviews shall be subject to the defendant's reasonable convenience.

B. Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to defendant at its principal office, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested, subject to any legally recognized privilege.

C. No information or documents obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) days' notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding), so that defendant shall have an

opportunity to apply to this Court for protection pursuant to Rule 26(c)(7) of the Federal Rules of Civil Procedure.

IX.

Duration of Final Judgment

Except as otherwise provided hereinabove, this Final Judgment shall remain in effect until ten (10) years from the date of entry.

X.

Construction, Enforcement, Modification and Compliance

Jurisdiction is retained by the Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of its provisions, for its enforcement or compliance, and for the punishment of any violation of its provisions.

XI.

Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

_____

United States District Judge

Appendix A

Dear Playmobil Dealer:

Since 1991, Playmobil USA has maintained a Retailer Discount Policy that provided for the termination of any Playmobil dealer that failed to adhere to certain Playmobil suggested price ranges. In January 1995, the Antitrust Division of the United States Department of Justice filed a civil suit that alleged that Playmobil enforced this policy in a manner that violated the antitrust laws by reaching agreements with some of its retailers about what their retail prices would be. Playmobil has agreed, without admitting any violation of the law and without being subject to any monetary penalties, to the entry of a civil Consent Order prohibiting certain pricing practices in the United States.

I have enclosed a copy of the Order for your information. Under its terms, you as a Playmobil dealer are absolutely free to sell Playmobil products at whatever resale price you choose. Furthermore, Playmobil may not attempt to influence your discounting of Playmobil products, influence the duration or frequency of your promotional events, or condition advertising allowances on your adhering to Playmobil's suggested resale prices.

If you learn that Playmobil or its agents have violated the terms of the Order at any time after the effective date of the Order, you should provide this information to Playmobil in writing.

Should you have any questions concerning this letter, please feel free to contact me.

Sincerely,_____

John Thorpe,

President Playmobil USA, Inc. 11 E. Nicholas Court Dayton, NJ 08810

In the United States District Court for the District of Columbia

United States of America, Plaintiff v. Playmobil USA, Inc., Defendant.

Case Number 1:95CV00214
Judge: James Robertson
Deck Type: Antitrust
Date Stamp: 01/31/95

Competitive Impact Statement

The United States of America, pursuant to section 2 of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b), submits this Competitive Impact Statement in connection with the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On January 30, 1995, the United States filed a civil antitrust complaint under section 4 of the Sherman Act, as amended, 15 U.S.C. 4, alleging that the defendant Playmobil USA, Inc. (''Playmobil'') engaged in a combination and conspiracy, in violation of section 1 of the Sherman Act, 15 U.S.C. 1, to fix the retail prices of Playmobil children's toys throughout the United States. The complaint alleges that, in furtherance of this conspiracy, Playmobil from February 1990 through August of 1994:

(a) Established and communicated to dealers minimum resale prices for Playmobil toys;

(b) Threatened to terminate dealers for selling or advertising Playmobil toys at prices below those minimum resale prices;

(c) Through the threats of termination, secured dealers' adherence to those minimum resale prices and limited the duration of promotional sales by dealers;

(d) Enforced adherence to minimum resale prices at the behest of dealers in order to stop price wars among them; and

(e) Agreed with dealers on the retail prices the dealers would charge for Playmobil toys.

The complaint also alleges that as a result of the combination and conspiracy, prices of children's toys have been fixed and maintained, and competition in the sales of children's toys has been restrained.

The complaint alleges that the combination and conspiracy is illegal, and accordingly requests that this Court prohibit Playmobil from continuing or renewing such activity or similar activities.

The United States and Playmobil have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent.

The Court's entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction over the matter for possible further proceedings to construe, modify or enforce the Judgment, or to punish violations of any of its provisions.

II

Description of Practices Giving Rise to the Alleged Violation of the Antitrust Laws

Playmobil, a New Jersey corporation, is a prominent seller of specialty toys for children in the United States, with annual sales at wholesale in excess of $18 million. Playmobil imports its toys from Germany, where its parent company makes them. From New Jersey it distributes to retail toy stores in every state, and these stores in turn sell Playmobil toys to consumers.

Over the past several years, Playmobil regularly published what it termed ''Suggested Retail Price Ranges'' for all of its products. It also annually issued letters to all of its dealers setting forth a ''Retailer Discount Policy.'' The Playmobil letters facially expressed a well-defined, unilateral, dealer-termination policy under *United States* versus *Colgate & Co.*, 250 U.S. 300 (1919) that even included some safeguards to ensure that Playmobil and its dealers would not enter into resale price agreements. The stated policy said, in effect, that Playmobil would, *entirely on its own*, monitor its retailers and automatically, *without discussion*, refuse to sell to any dealer it determined was discounting beyond the prescribed limits (emphasis supplied). In the letters, Playmobil also committed not to further discuss the policy or anything related to it.

In practice, however, Playmobil ignored these restrictions: Playmobil personnel repeatedly contacted and pressured dealers in over a dozen states who reportedly were discounting below the policy's ''suggested'' minimum levels. Playmobil secured from a number of its dealers express agreements to follow Playmobil's published retail prices. Playmobil often expressly threatened a dealer with termination in order to obtain its agreement.

Frequently the impetus for Playmobil's actions was pressure from other dealers that did not want to face

price competition in the retail sales of Playmobil toys. Playmobil determined whether an accused dealer was in fact discounting beyond the ''suggested'' limits, and if it was, Playmobil forcefully ''discussed'' its resale pricing policy with the offending dealer.

If, after such discussions, the dealer did not agree to raise its prices, Playmobil responded with various threats—additional stores in the immediate area might begin carrying Playmobil toys, Playmobil might improperly process orders, a variety of shipping problems could occur. In some instances, Playmobil refused to sell additional toys to a dealer until after that dealer agreed to adhere to Playmobil's price ranges.

The volume of commerce affected by Playmobil's illegal conduct is difficult to estimate. Playmobil's illegal conduct was concentrated in the more than one dozen states where, at the urging of retail dealers that wanted to prevent price competition, it obtained illegal resale pricing agreements with potential discounters. Thus while it is difficult to estimate the total volume of commerce affected by Playmobil's violations, it clearly was substantial although significantly less than the entire $35 million in annual, nationwide, retail sales of Playmobil toys.

Playmobil, by using the devices described, was usually successful in inducing dealers to raise their prices. Indeed, the power of these actions was such that Playmobil never had to permanently sever its relationship with a dealer because of that dealer's continued discounting. Thus, the result of Playmobil's activities was to fix, raise and stabilize the prices at which toy retailers sold Playmobil products. The courts have routinely found conduct such as Playmobil's here to be a *per se* violation of the prohibition on agreements in restraint of trade under section 1 of the Sherman Act.

III

Explanation of the Proposed Final Judgment

The parties have stipulated that the Court may enter the proposed Final Judgment at any time after compliance with the APPA. The proposed Final Judgment states that it shall not constitute an admission by either party with respect to any issue of fact or law.

The proposed Final Judgment enjoins any continuation or renewal, directly or indirectly, of the type of combination or conspiracy alleged in the Complaint. Specifically, Section IV A prohibits Playmobil from entering into any agreement or understanding with any dealer to fix, stabilize or maintain any dealer's prices for Playmobil products in the United States.

The law permits a manufacturer unilaterally to announce and unilaterally to implement a policy of terminating discounters. *Colgate, supra.* The manufacturer may not, however, secure a dealer's *agreement* on retail price levels. *United States* v. *Parke, Davis & Co.*, 362 U.S. 29 (1960). If a dealer discounts, the manufacturer must choose either to continue to supply that dealer, knowing of its discounting practices, or to forego that retail outlet for its products in the future.

In this case, the Complaint alleges that Playmobil reached illegal agreements with its dealers in the course of discussions about discount pricing. Although discussions between a manufacturer and a dealer about resale pricing do not always result in an agreement about those prices, *see Monsanto Co.* v. *Spray-Rite Serv. Corp.*, 465 U.S. 752 (1984), the evidence in this case showed, and the Complaint alleges, that Playmobil's discussions clearly led to, and in fact included, illegal agreements. *Isaksen* v. *Vermont Castings*, 825 F.2d 1158, 1164 (7th Cir. 1987), *cert. denied*, 486 U.S. 1005 (1988). To avoid a repetition of such episodes, Section IV B bars Playmobil from discussing, explaining, or encouraging dealers to adhere to suggested prices, threatening to terminate a dealer for discounting, or discussing a dealer's termination with another dealer. This prohibition addresses the central offense in this case and extends for the entire ten-year life of the decree.

The proposed Final Judgment not only bars Playmobil's unlawful practices, but also contains additional provisions that are remedial in nature, intended to restore competitive conditions in retail toy markets and in dealer relationships, both of which have been distorted by Playmobil's conduct from 1990 through August of 1994, as set forth in the Complaint. These provisions bar some activities that are not, in and of themselves, illegal, but which could nevertheless serve the same purpose as Playmobil's outright agreements to fix resale prices—preventing Playmobil dealers from selling or advertising at discount prices.

To establish a new pricing regime to replace the former illegally enforced regime, and to encourage retailers of Playmobil toys that previously could not offer Playmobil products at discount prices, because of Playmobil's illegal conduct, to exercise their ability to discount if they so wish, Sections IV C and D of the Final Judgment prohibit Playmobil for the first five years of the decree from reestablishing its resale price policy in any form, even forms that would be legal if Playmobil had never engaged in the illegal conduct alleged in the Complaint. Thus, Section IV C bars Playmobil from announcing policies to (1) sell only to non-discounting dealers, (2) terminate or hinder dealers for discounting, or (3) control the duration or frequency of a dealer's discounting. Section IV D 3 further ensures that regardless of its stated policies, Playmobil will not terminate or otherwise take actions against any dealer because of discounting. Under the decree, the only thing Playmobil may continue to do is to publish truly suggested retail prices, together with the clear statement that dealers are free to ignore the suggestions.

When it is clear that a manufacturer's suggested retail prices are informational only and strictly optional, they can serve useful market functions without adversely affecting competition. In such an environment, dealers become fully aware of and accustomed to exercising their pricing rights.

Since the problem with Playmobil's policy lay in the implementation of the policy rather than in the policy itself, the prohibition on adopting such a policy extends only for five years. Similarly, since Playmobil never improperly terminated any dealers, the prohibition on terminations also extends only for five years. Playmobil will thereafter regain its *Colgate* right unilaterally to announce a resale pricing policy and unilaterally to terminate non-complying dealers. Throughout the period, Playmobil will be able to disseminate its suggested retail prices, but it must make clear that actual retail sales prices will be set entirely at its dealers' discretion.

Subsections 1 and 2 of Section IV D of the Final Judgment also prohibit Playmobil from accepting dealer complaints about other dealers' pricing. In some cases, Playmobil was acting in response to dealers' complaints when it pressured other dealers to agree to charge higher retail prices. The complaints about discounting were the proximate cause of much of the illegal conduct alleged in the Complaint. Although a manufacturer's merely listening to a dealer's complaint about another's pricing does not necessarily violate the law, *Business Electronics Corp.* v. *Sharp Electronics Corp.*, 485 U.S. 717 (1988), the evidence here showed that the dealer complaints led directly to Playmobil's violations. Accordingly, in order to establish a period of time during which Playmobil's

and its dealers' conduct can become clearly legal, Playmobil has agreed not even to accept such communications from its dealers for five years.

Section IV E of the Final Judgment prohibits Playmobil from establishing a cooperative advertising program that conditions rebates in any way upon a dealer's adherence to certain advertising price levels. Playmobil did not have a cooperative advertising program, but its illegal price agreements with dealers were often triggered by advertising. In order to avoid any discussions at all with dealers on the sensitive issue of retail pricing, Playmobil has also agreed not to undertake a cooperative advertising program during the first five years of the decree. This will provide a period of time during which market conditions can become more competitive, and Playmobil and its dealers can become more accustomed to remaining within legal parameters.

Section V of the proposed Final Judgment is designed to ensure that Playmobil's dealers are aware of the limitations the Final Judgment imposes on Playmobil. Section V requires Playmobil to send notices and copies of the Judgment to each dealer who purchased Playmobil products from the defendant in 1993 or 1994. In addition, Playmobil must send notices and copies of the Judgment to every other dealer to which it sells Playmobil products within ten years of the date of the Judgment's entry.

Sections VI and VII require Playmobil to set up an antitrust compliance program and designate an antitrust compliance officer. Under the program, Playmobil is required to furnish a copy of the Judgment and a less formal written explanation of it to each of its officers and directors and each of its non-clerical employees, representatives, or agents responsible for the sale or advertising of Playmobil products in the United States.

In addition, the proposed Final Judgment provides methods for determining and securing Playmobil's compliance with its terms. Section VIII provides that, upon request of the Department of Justice, Playmobil shall submit written reports, under oath, with respect to any of the matters contained in the Judgment. Additionally, the Department of Justice is permitted to inspect and copy all books and records, and to interview officers, directors, employees and agents, of Playmobil.

Section IX makes the Judgment effective for ten years from the date of its entry.

Section XI of the proposed Final Judgment states that entry of the Judgment is in the public interest. The APPA conditions entry of the proposed Final Judment upon a determination by the Court that the proposed Final Judgment is in the public interest.

The Government believes that the proposed Final Judgment is fully adequate to prevent the continuation or recurrence of the violation of section 1 of the Sherman Act alleged in the Complaint, and that disposition of this proceeding without further litigation is appropriate and in the public interest.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendant.

V

Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wants to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the **Federal Register.**

Written comments should be submitted to: Rebecca P. Dick, Chief, Civil Task Force I, U.S. Department of Justice, Antitrust Division, 1401 H Street NW., Room 3700, Washington, DC 20530.

Under Section X of the proposed Judgment, the Court will retain jurisdiction over this matter for the purpose of enabling either of the parties to apply to the Court for such further orders or directions as may be necessary or appropriate for the construction, implementation, modification, or enforcement of the Judgment, or for the punishment of any violations of the Judgment.

VI

Alternatives to the Proposed Final Judgment

The only alternative to the proposed Final Judgment considered by the Government was a full trial on the merits and on relief. Such litigation would involve substantial cost to the United States and is not warranted, because the proposed Final Judgment provides appropriate relief against the violations alleged in the Complaint.

VII

Determinative Materials and Documents

No particular materials or documents were determinative in formulating the proposed Final Judgment. Consequently, the Government has not attached any such materials or documents to the proposed Final Judgment.

Dated:

Respectfully submitted,

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DEPARTMENT OF LABOR

Mine Safety and Health Administration; Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Serendipity Mining, Inc.

[Docket No. M–95–01–C]

Serendipity Mining, Inc., P.O. Box 1588, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.342 (methane monitors) to its No. 4 Mine (I.D. No. 15–17568) located in Whitley County, Kentucky. The petitioner proposes to monitor continuously with a hand-held methane and oxygen detector instead of using a methane monitoring system on permissible three-wheel tractors with