

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

4/30/13
12 Civ. 2826 (DLC)
MEMORANDUM OPINION
& ORDER

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UNITED STATES OF AMERICA, :
:
Plaintiff, :
-v- :
APPLE, INC., et al., :
Defendants. :
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DENISE COTE, District Judge:

On April 29, 2013, non-party Bob Kohn ("Kohn") filed a motion for leave to file a five-page amicus curiae response to the U.S. Department of Justice's (the "Government") Tunney Act filings as to defendant The Penguin Group, a division of Pearson PLC and Penguin Group (USA), Inc. (collectively, "Penguin"). For the following reasons, the motion is granted.

On December 18, 2013 the Government submitted a proposed final judgment as to Penguin ("Penguin Final Judgment"), as well as a Competitive Impact Statement pursuant to Section 2(b) of the Tunney Act, 15 U.S.C. §§ 16(b)-(h), which invited public comment on the Penguin Final Judgment. Kohn filed a 33-page submission during the public comment period.

The Government filed its response to the public comments on April 5 and, pursuant to a Scheduling Order of January 7, submitted a motion for entry of the Penguin Final Judgment on

April 18. Submissions in response to the motion by parties to the litigation are due May 3.

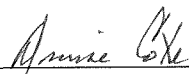
Under Section 16(e) of the Tunney Act, the district court must determine in advance whether the entry of an antitrust consent decree is "in the public interest." 15 U.S.C. § 16(e). In making this determination, the Court "may . . . authorize full or limited participation in proceedings before the court by interested persons or agencies, including appearance amicus curiae, intervention as a party pursuant to the Federal Rules of Civil Procedure, . . . or participation in any other manner and extent which serves the public interest as the court may determine appropriate." 15 U.S.C. § 16(f). In exercising its discretion under this provision, "the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24. In accordance with these principles, Kohn's five-page response to the Government's Tunney Act filings is accepted.

CONCLUSION

Kohn's April 29, 2013 motion for leave to file an amicus curiae response is granted. Kohn's proposed response is accepted.

SO ORDERED:

Dated: New York, New York
April 30, 2013



DENISE COTE
United States District Judge