UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION,
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580, Plaintiff,

v.

THE HEARST TRUST
c/o The Hearst Corporation
959 Eighth Avenue
New York, New York 10019,

THE HEARST CORPORATION,
959 Eighth Avenue
New York, New York 10019,

and

FIRST DATABANK, INC.,
1111 Bayhill Drive
San Bruno, California 94066, Defendants.

Civ. No. _____

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF PURSUANT TO SECTION 7A(g)(2) OF THE CLAYTON ACT AND SECTION 13(b) OF THE FEDERAL TRADE COMMISSION ACT

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), by its designated attorneys, petitions the Court, pursuant to Section 7A(g)(2) of the Clayton Act, 15 U.S.C. § 18a(g)(2), and Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), for a permanent injunction and other equitable relief against Defendant The Hearst Corporation and its owner, Defendant The Hearst Trust (collectively "Defendant Hearst"), and The Hearst Corporation's wholly-owned subsidiary, First DataBank, Inc. ("Defendant FDB"), for (a) Defendant Hearst's failure to substantially comply with the notification requirements under subsection (a) of Section 7A of the Clayton Act, 15 U.S.C. § 18a, also known as Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act"), prior to the acquisition of J.B. Laughrey, Inc., that included Medi-Span, Inc., and Medi-Span International, Inc. (collectively "Medi-Span"); and (b) the acquisition of Medi-Span by Defendant Hearst and the integration of Medi-Span into Defendant FDB, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

NATURE OF THE CASE

1. This action challenges the acquisition by Defendant The Hearst Corporation, sole owner of Defendant FDB, of Defendant FDB's chief competitor in the sale of integratable

electronic drug database products (known as integratable drug data files), Medi-Span. As a result of this 1998 acquisition, Defendant FDB achieved monopoly power in the sale of integratable drug data files in the United States. The effects of the acquisition were drastic price increases to customers, and reductions in product quality and customer service.

2. The challenged acquisition took place after Defendant Hearst failed to produce documents required by the HSR Act for the Commission's premerger review of the proposed acquisition.

JURISDICTION AND VENUE

3. Jurisdiction is based on Section 13(b) of the FTC Act, 15 U.S.C. § 53(b); Section 7A(g) of the HSR Act, 15 U.S.C. § 18a(g); and 28 U.S.C. §§ 1337 and 1345.

4. Defendants transact and do business in the District of Columbia, so venue is proper in this Court under Section 13(b) of the FTC Act; 28 U.S.C. § 1391(b) and (c); and Section 12 of the Clayton Act, 15 U.S.C. § 22.

THE PARTIES

5. The Commission is an administrative agency of the United States Government, established, organized, and existing pursuant to the FTC Act, 15 U.S.C. § 41 et seq., with its principal offices at 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. The Commission is vested with authority and responsibility for, *inter alia*, administering the premerger notification program that was established by Section 7A of the Clayton Act, and enforcing Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45, by challenging acquisitions that may substantially lessen competition in any line of commerce in any section of the country.

6. Defendant The Hearst Trust, with offices at 888 Seventh Avenue, New York, New York 10106, is the sole shareholder of Defendant The Hearst Corporation. Defendant The Hearst Corporation is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business at 959 Eighth Avenue, New York, New York 10019. At all times pertinent to this complaint, Defendant Hearst had total assets valued in excess of $100 million.

7. Defendant FDB, a wholly-owned subsidiary of Defendant The Hearst Corporation, is a corporation organized and existing under the laws of the state of Missouri, with its principal place of business at 1111 Bayhill Drive, San Bruno, California 94066. FDB's principal business was, prior to its acquisition of Medi-Span, and remains to this day, the production and sale of integratable drug data files as defined in Paragraph 12 below, primarily in the United States.

8. Medi-Span, Inc. and Medi-Span International, Inc. were, prior to their acquisition by Defendant The Hearst Corporation and their integration into FDB, corporations organized and existing under the laws of the state of Indiana, with their principal place of business at 8425 Woodfield Crossing Blvd., Indianapolis, Indiana 46240. The principal business of Medi-Span, Inc. was, prior to its acquisition by Defendant The Hearst Corporation and integration into FDB, the production and sale in the United States of integratable drug

data files as defined in Paragraph 12 below. Medi-Span International, Inc. also produced and sold different integratable drug data files than Medi-Span, Inc., for use by customers outside the United States. Medi-Span, Inc. was owned by J.B. Laughrey, Inc., whose sole shareholder was Mr. J. Bruce Laughrey ("Laughrey"), a natural person. At all times pertinent to this complaint, Laughrey had total assets in Medi-Span, Inc. and Medi-Span International, Inc. that were valued in excess of $10 million.

9. Defendant The Hearst Trust, Defendant The Hearst Corporation, and Defendant FDB are, and at all relevant times herein have been, engaged in commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

10. Medi-Span is and was, at all relevant times herein, engaged in commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

THE ACQUISITION

11. On or about January 15, 1998, Defendant The Hearst Corporation acquired Medi-Span through the acquisition of all the capital stock of J.B. Laughery, Inc. for approximately $38 million ("Acquisition").

TRADE AND COMMERCE

12. The principal products sold by Defendant FDB, and those sold by Medi-Span prior to the Acquisition and Medi-Span's integration into Defendant FDB, are comprehensive, integratable drug information databases (hereinafter "integratable drug data files"). These are electronic databases containing comprehensive clinical, pricing, and other information on prescription and non-prescription medicines. Integratable drug data files are uniquely capable of being readily integrated with other computerized information systems to help physicians, pharmacists, and others quickly obtain information important to decisions regarding the prescription, dispensing, and purchase of medicines, and also to automatically provide drug information that patients need for safe use of their drugs. For example, pharmacists rely on integratable drug data files to determine whether a drug prescribed to a patient may cause fatal or other injurious interactions with other drugs being taken by the patient; to avoid dispensing the wrong drug, or the wrong dosage of a drug, for the patient; and to make sure drugs are dispensed with appropriate cautionary labels and other patient information. Integratable drug data files also serve other important purposes; for example, they aid governmental and private health plans to improve the quality of care and reduce medication costs for their beneficiaries, by minimizing the prescription and dispensing of drugs that are medically inappropriate and/or less cost-effective than alternative drugs.

13. Drug information in other forms is not an adequate substitute for the provision of such information through integratable drug data files. For example, a pharmacist filling a prescription can more quickly and reliably check for harmful drug interactions through an instant, automatic check of a drug data file when he or she enters the prescription into the pharmacy's computer system, than through consulting a separate, unintegrated, and less up-to-date information source such as a book or data on a compact disk. Relying on such a

separate reference would be more time-consuming, and would increase the risk that a harmful drug interaction would not be detected before the patient purchases and uses the drug.

COUNT I

DEFENDANT HEARST VIOLATED SECTION 7A(a) and (b) OF THE CLAYTON ACT

14. Defendant Hearst, Laughrey, and the proposed Acquisition all met the criteria that require premerger notification pursuant to Section 7A(a) and (b) of the HSR Act, and Regulations promulgated under the HSR Act, 16 C.F.R. Part 801, *et. seq.* Because of this, Defendant The Hearst Trust and Laughrey were required to submit premerger notifications, certified by an officer, with all required information, and to observe a 30-day waiting period before they could consummate the Acquisition.

15. As of December 15, 1997, Defendant The Hearst Trust and Laughrey had each filed a Notification and Report Form with the Federal Trade Commission and the Antitrust Division of the Department of Justice concerning the proposed acquisition of Medi-Span. Defendant The Hearst Corporation filed on behalf of Defendant The Hearst Trust ("December 1997 Premerger Notification"). The Premerger Notification Office of the FTC assigned a 30-day waiting period on December 15, 1997, when Laughrey filed premerger notification for the proposed Acquisition.

16. The premerger notification and waiting period gives the Federal Trade Commission and the Department of Justice prior notice of, and information about, a proposed acquisition before it is consummated. During the waiting period either the Department of Justice or the Federal Trade Commission has an opportunity to investigate the proposed acquisition and determine whether to extend the waiting period to gather more information through issuance of Requests for Additional Information and Documentary Material pursuant to 16 C.F.R. § 803.20. The antitrust agency conducting the investigation may seek an injunction to prevent consummation of the proposed acquisition, if it has reason to believe that the acquisition, if consummated, may violate the antitrust laws.

17.The information required to be submitted with a premerger notification includes, among other things, all documents responsive to Item 4(c) of the notification form and a list of documents that are responsive to Item 4(c) but are withheld for privilege. The documents required by Item 4(c) include:

> all studies, surveys, analyses and reports which were prepared by or for any officer(s) or director(s) . . . for the purpose of evaluating or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets . . . .

18.Defendant Hearst submitted a single document responsive to Item 4(c) and did not list any privileged Item 4(c) documents with the December 1997 Premerger Notification.

19.A Request for Additional Information and Documentary Material was not issued within 30 days of the filing of the December 1997 Premerger Notification.

20. Defendant The Hearst Corporation consummated the Acquisition of J.B. Laughrey, Inc. on or about January 15, 1998.

21. The Acquisition enabled Defendant FDB to dramatically increase prices within the relevant market, to customers of both Medi-Span and Defendant FDB. Based upon this price increase and customers' complaints, the Commission began an investigation to determine whether the Defendants violated the antitrust laws, including the HSR Act.

22. The Commission authorized the use of compulsory process on December 10, 1999. During the course of its investigation, the Commission received the documents listed in Paragraph 23, all of which are documents that were required by the instructions for Item 4(c) to have been included in Defendant Hearst's December 1997 Premerger Notification:

a. Defendant Hearst provided the Commission with the documents described in Paragraphs 23(a) and (b) on January 6, 2000.

b. Thereafter, the Commission issued *subpoenas duces tecum* and a civil investigative demand to Defendant Hearst for documents and information. In response, Defendant Hearst included the documents listed in Paragraphs 23(c)-(e).

23. Documents that Defendant Hearst was required to submit by Item 4(c), but which it did not submit in its December 1997 Premerger Notification, include:

a. Letter from The Hearst Corporation's Chief Executive Officer, Frank A. Bennack, Jr., to The Hearst Corporation's Board of Directors describing and recommending the acquisition of Medi-Span, dated September 18, 1997;

b. Proposal to acquire Medi-Span sent to The Hearst Corporation Board of Directors describing the health care industry, the business of FDB, and the proposed acquisition, dated September 24, 1997;

c. Letter with attachments from attorney for Medi-Span, Steven Claffey, to FDB Vice-President, Joe Palermo, concerning the acquisition of Medi-Span, dated April 17, 1997;

d. Handwritten notes by The Hearst Corporation's Senior Vice-President, Raymond Joslin, for an oral presentation to The Hearst Board of Directors, describing the proposed acquisition and business of FDB and Medi-Span; and

e. Proposal to acquire Medi-Span created by FDB officers, from the files of Raymond Joslin, The Hearst Corporation's Senior Vice-President, that describes Medi-Span, the markets, and competition between Medi-Span and FDB, November 1994.

The Proposal to acquire Medi-Span listed above in subparagraph (b) was resubmitted to The Hearst Corporation's Board of Directors in a letter from The Hearst Corporation's Chief Executive Officer, Frank A. Bennack, Jr., dated December 1, 1997. This document also was not attached to the December Premerger Notification.

24. The documents described in the preceding paragraph were prepared by or for officers or directors of Defendant The Hearst Corporation or Defendant FDB, for the purpose of evaluating or analyzing the proposed Medi-Span transaction with respect to market shares, competition, competitors, markets, or potential for sales growth or expansion into product or geographic markets. These documents were required to have been submitted in response to Item 4(c) of the December 1997 Premerger Notification before Defendant The Hearst Corporation consummated the Acquisition.

25. The FTC advised Defendant Hearst, in a letter dated July 31, 2000, that Defendant Hearst's December 1997 Premerger Notification was deficient because it failed to include documents required by Item 4(c) of the HSR Act.

26. On or about August 21, 2000, Defendant Hearst amended its response to Item 4(c) of its notification to acquire Medi-Span by submitting three documents (identified in paragraphs 23(a), (b), and (c)), that were not included in the December 1997 Premerger Notification and by listing, but not submitting, six other documents that had not been listed on the December 1997 Premerger Notification. The six other documents were withheld based on attorney-client and work product privileges.

27. The six documents listed, but not submitted, on Defendant Hearst's amended response to Item 4(c) were required to have been submitted, or listed as withheld, in response to Item 4(c) of the December 1997 Premerger Notification before Defendant The Hearst Corporation consummated the Acquisition.

28. Defendant Hearst's failure to submit the Item 4(c) documents described in paragraph 23, and to submit or list the six Item 4(c) documents referred to in paragraph 27, in Defendant Hearst's December 1997 Premerger Notification, deprived the Commission of significant information relevant to its premerger analysis of the Acquisition.

29. Defendant Hearst did not comply with the reporting and waiting requirements of Section 7A(a) and (b) of the HSR Act and Rules, because Defendant Hearst acquired and continues to hold Medi-Span without having first filed a notification substantially in compliance with the HSR Act and Rules.

30. For the foregoing reasons, Defendants The Hearst Trust and The Hearst Corporation are in continuous violation of Section 7A(a) and (b) of the HSR Act, and have been since January 15, 1998.

COUNT II

THE ACQUISITION VIOLATES SECTION 7 OF THE CLAYTON ACT AND SECTION 5 OF THE FTC ACT

31. The Commission investigated the Acquisition to determine whether it violated the Federal antitrust laws. On March 30, 2001, the Commission authorized the commencement of an action in United States District Court under Section 13(b) of the FTC Act to seek: (a) divestiture and other permanent equitable relief to undo the Acquisition, and (b) disgorgement of profits.

32. In authorizing the commencement of this action, the Commission determined that such relief is in the public interest and that it has reason to believe that the aforesaid acquisition violated Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act, because the acquisition may have substantially lessened competition and/or tended to create a monopoly in the relevant market.

33. The relevant product market is integratable drug data files, and/or one or more subsets thereof.

34. The relevant section of the country, or geographic market, is the United States, due to, among other things, major differences between the United States and other countries, and major similarities among different parts of the United States, in the drug information required by consumers.

35. Until the Acquisition, Defendant FDB and Medi-Span were substantial, direct competitors within the relevant market of integratable drug data files in the United States, and faced little or no competition from other firms. Competition between Defendant FDB and Medi-Span was strong, vigorous, helped hold down prices, promoted product improvements, and improved the quality of service.

36. After the Acquisition, and to this day, Defendant FDB held and holds a monopoly or near-monopoly in the relevant market.

37. Defendant FDB, enabled by the Acquisition, drastically increased prices within the relevant market to both Medi-Span's and Defendant FDB's customers. These price increases in some instances more than doubled or tripled the total fees previously paid, far exceeding inflation or any cost increases specific to the relevant market. Virtually all customers acceded to the price increases imposed by Defendant FDB.

38. Notwithstanding enormous price increases during the three years since the acquisition was consummated, there remains little or no competition to Defendant FDB in the relevant market. New entry into the relevant market that might be sufficient to roll back above-competitive price increases in the market has not occurred since the acquisition.

39. The Acquisition has caused, and will continue to cause, absent the injunctive relief requested by the Commission, severe anticompetitive effects in the relevant market, including but not limited to:

(a) extraordinary price increases above competitive levels, which are unlikely to subside absent relief from this Court, and indeed may become even greater;

(b) reductions in customer service quality, and in the development of new and innovative products.

40. The Acquisition violated Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

COUNT III

THE ACQUISITION CONSTITUTES MONOPOLIZATION AND AS SUCH VIOLATES SECTION 5 OF THE FTC ACT

41. The Commission realleges and incorporates by reference paragraphs 1 through 40.

42. Defendant Hearst and Defendant FDB obtained monopoly power in the relevant market through the Acquisition.

43. Defendant Hearst and Defendant FDB acted willfully to acquire monopoly power in the relevant market through the Acquisition.

44. Using this monopoly power, Defendant FDB drastically increased prices within the relevant market to both Medi-Span's and Defendant FDB's customers. This monopoly power also enabled Defendant Hearst and Defendant FDB to reduce quality in customer service, and exercise its monopoly power in other ways.

45. The monopolization by Defendant Hearst and Defendant FDB in the relevant market constitutes an unfair method of competition in or affecting commerce, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45.

COUNT IV

THE ACQUISITION CONSTITUTES ATTEMPTED MONOPOLIZATION UNDER SECTION 5 OF THE FTC ACT

46. The Commission realleges and incorporates by reference paragraphs 1 through 40.

47. Defendant Hearst and Defendant FDB have engaged in an anticompetitive course of conduct by willfully seeking to obtain a monopoly in the relevant market through the Acquisition.

48. Defendant Hearst and Defendant FDB acted with a specific intent to monopolize, and to destroy competition in, the relevant market through the Acquisition. Defendant Hearst and Defendant FDB devised and implemented a calculated campaign to raise the price of drug data files, to raise the price of services that had been provided with drug data files, and to exercise the acquired monopoly power in other ways.

49. At the time Defendant Hearst and Defendant FDB engaged in the acts in paragraphs 47 and 48, they had a dangerous probability of succeeding in monopolization of the relevant market, and it was unlikely that timely and sufficient entry by any competitors would occur. Subsequent to the Acquisition, defendants have instituted extraordinary price increases, reductions in quality of service, and other acts of monopolization of the relevant market, without timely and sufficient entry by competitors in the relevant market.

50. The attempt to monopolize the relevant market by Defendant Hearst and Defendant FDB constitutes an unfair method of competition in or affecting commerce, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45.

PRAYER FOR RELIEF

For the reasons stated above, the granting of the injunctive relief sought is in the public interest.

WHEREFORE, the Commission requests that the Court, to remedy the violations of Sections 7 and 7A(a) of the Clayton Act and Section 5 of the Federal Trade Commission Act:

1. Require Defendants to create a business entity to be divested. Such business shall be able to offer a full line of drug data files (either those acquired through the Acquisition, those held prior to the Acquisition, those developed after the Acquisition, some combination thereof, a duplicate copy of all information and technology possessed by Defendant Hearst relating to the drug data files, and/or other assets), and such entity shall possess associated assets, including, but not limited to, all associated intellectual property rights, employee contracts, and customer contracts.

2. Require Defendants to divest the business created pursuant to Paragraph 1 of this Prayer for Relief to an acquirer and in such a manner that is acceptable to the Commission so as to create a new competitor in the relevant market, and reestablish the competition that had existed between Defendant FDB and Medi-Span before the Acquisition.

3. Order such other equitable relief, including disgorgement, plus interest, to eliminate the unlawful monopoly gains reaped by Defendant Hearst as a result of its illegal acquisition of Medi-Span, continuing until Defendant Hearst and Defendant FDB divest Medi-Span and that divestiture completely restores competition in the relevant market, so as to prevent Defendant Hearst and Defendant FDB from continuing to reap monopoly profits in the relevant market; and any additional relief that the Court finds necessary to redress and prevent recurrence of defendants' violations of Sections 7 and 7A(a) of the Clayton Act and Section 5 of the FTC Act as herein alleged.

4. Award such other and further relief as the Court may determine to be proper and just, including costs.

Respectfully submitted,

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Dated: _____, 2001