

## SETTLEMENT AGREEMENT

WHEREAS, the States of Connecticut, Illinois, Maryland, Massachusetts, New Jersey, New York, Ohio, and Wisconsin ("the States") are and have been investigating possible price fixing by Playmobil USA and certain retail merchants; and

WHEREAS, Playmobil USA has denied that any wrong-doing has occurred in the distribution and sale of its products; and

WHEREAS, the States have determined that it is in the public interest to enter into this Settlement Agreement in order to avoid the time and expense which would be incurred in the event this Settlement Agreement was not concluded;

WHEREAS, Playmobil has determined that it is in its interest to enter into this Settlement Agreement in order to avoid the time and expense which would be incurred in the event this Settlement was not concluded;

NOW, THEREFORE, in consideration of the matters set forth hereinabove and the following covenants, the parties hereto stipulate and agree as follows:

1. As used herein, the term "Playmobil USA" shall mean and include Playmobil USA, Inc., its subsidiaries and divisions, all of its officers, directors, employees, and agents, and each of its predecessors, successors, and assigns.
2. The terms of this Settlement Agreement are binding upon the States and Playmobil USA.
3. a. Playmobil USA shall pay to the States the sum of \$400,000.00 to reimburse the States' costs of investigation. The foregoing sum shall be paid to the State of New Jersey, as

escrow agent for the States, (for further distribution among the States) in accordance with the following schedule:

- (1) The sum of \$100,000.00 within thirty (30) days of the entry of the Amended Final Judgment on Consent described in ¶ 8, hereof, and
- (2) three payments of \$100,000.00 each on the anniversary dates of the entry of the aforesaid Amended Final Judgment on Consent, the first in 1998, the second in 1999 and the third in 2000.

b. The State of New Jersey shall upon receipt of each payment from Playmobil USA disburse that payment in equal shares to counsel for each of the States. It is understood by and among the parties hereto that each State's Attorney General shall be free to use that state's share of the settlement proceeds as he/she, in his/her sole discretion, and otherwise in accordance with applicable law, deems appropriate for one or more of the following purposes:

- i. Deposit into that state's antitrust enforcement fund, such as, for example, the Illinois Attorney General's State Projects and Court-Ordered Distribution fund for Antitrust Enforcement;
- ii. Deposit into that state's treasury;
- iii. Charitable uses consistent with the interests of consumers who might have purchased Playmobil USA products that were affected by the offense alleged in *United States v. Playmobil USA, Inc.*, Civil Action No. 1:95CV00214 (DDC Jan. 31, 1995); or
- iv. Deposit into the NAAG Antitrust and Consumer Protection Education and Training Fund or the NAAG Antitrust Litigation Fund.

c. Playmobil USA may, at its option, elect to pay the entire sum outstanding at any time prior to the time for payment outlined in this paragraph.

d. Playmobil USA shall provide to the States an assurance in writing in the form attached hereto from its parent, Playmobil GmbH, that it will stand behind Playmobil USA and assure payment outlined in this paragraph.

e. In the event that Playmobil USA shall default in the payment of any installment as set forth in this paragraph and remain in default for a period of thirty (30) calendar days after receipt of written notice of such default, the entire balance then outstanding shall immediately become due and payable, and the States shall be entitled to enter judgment for the same without the necessity of any further legal proceedings whatsoever. The States' reasonable costs and fees ensuing from such action shall be borne by Playmobil USA. In the event of said default, the release and covenant contained herein shall be null and void and of no force or effect.

4. During the pendency of the period in which Playmobil USA is making payments to the States as part of this Settlement Agreement, Playmobil USA shall notify the States in writing of any sale or transfer of nineteen percent (19%) or more of its assets or its stock, or other share capital, or any other such sale or transfer which has the effect of changing the control of Playmobil USA at least thirty (30) days prior to such sale or transfer of stock, share capital, or assets. The duty of Playmobil USA to notify the States of any such sale or transfer, as herein above described, shall terminate upon full payment of the sums agreed upon pursuant to this Settlement Agreement.

5. It is hereby acknowledged between the States and Playmobil USA that the payments being made hereunder are not the result of, nor in the form of the imposition of any fine or penalty resulting from any claim that Playmobil USA violated any criminal statute, but are solely being paid in settlement of the States' compensatory claims for reimbursement, and the parties hereto expressly agree that such payments do not contain any amount for triple payment, for penalties, punitive recovery, or forfeiture, or any other amount.

6. It is expressly understood and agreed between the parties hereto that neither this Settlement Agreement, nor the payment of the amounts specified herein, shall be construed as or constitute an admission on the part of Playmobil USA of any liability whatsoever.

7. In consideration of the entire Settlement Agreement, all claims of the States comprehended within the investigations shall be compromised and discharged as to Playmobil USA. In consideration thereof, the States do hereby expressly covenant, promise, and agree with Playmobil USA that the States shall not now or hereafter institute, maintain, or assert any claim or cause of action against Playmobil USA, which existed prior to the date hereof and which is based upon or arises out of any violation of any antitrust laws of the States or of the United States, and which claims or causes of action could have been asserted by the States against Playmobil USA in any actions that might have been brought by the States as a result of the investigations and which are based, in whole or in part, on any fact, matter or transaction, that was set forth in the Complaint in the *United States v. Playmobil USA, Inc.*, Case No. 1:95CV00214 (DDC Jan. 31, 1995).

8. Playmobil USA and the States each consent to the entry of an Amended Final Judgment on Consent in the form annexed hereto.

9. Any notices or payments to be provided to the States by Playmobil USA in accordance with the terms of this Settlement Agreement shall be made by delivery of the same to counsel for the State of New Jersey. Any notices to be provided to Playmobil USA by the States in accordance with the terms of this Settlement Agreement shall be made by delivery of the same to counsel for Playmobil USA.

10. The signatories hereto expressly represent that they have the authority to enter into this Settlement Agreement on behalf of their respective parties.

11. This Settlement Agreement may be executed by the parties in counterparts; such counterparts, taken together, shall constitute a single agreement. This Settlement Agreement constitutes the entire agreement of the parties hereto and shall be interpreted in accordance with the laws of the State of New Jersey.

AGREED and SUBSCRIBED to this                      day of May, 1997.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
	:	Civil Action No.
	:	1: CV-95-0287
Plaintiff,	:	
	:	
v.	:	
	:	
PLAYMOBIL USA, INC.,	:	
	:	
Defendant.	:	

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AMENDED FINAL JUDGMENT

The Commonwealth of Pennsylvania ("Commonwealth") has filed a Complaint for damages and injunctive relief on its own behalf and as parens patriae on behalf of natural person citizens of Pennsylvania who purchased Playmobil products, as defined in the Complaint herein, during the period of the alleged conspiracy, against Playmobil USA, Inc. ("Playmobil USA") alleging violations of federal antitrust laws. Playmobil USA denies the allegations stated therein.

The Commonwealth and Playmobil USA desire to resolve any and all disputes arising from the Complaint. These parties have entered into a Settlement Agreement dated March 3, 1995, which has been filed with the Court and is incorporated by reference herein. In full and final settlement of the claims set forth in the Complaint, Playmobil USA has agreed to pay a sum of Two Hundred Seventy-five Thousand Dollars (\$275,000) into a Settlement Account as compensatory damages and for attorneys' fees and administration costs. Playmobil USA has also agreed to entry of this Amended Final Judgment.

Notice of the settlement was given pursuant to Court Order in accordance with 15 U.S.C. § 15c(b). The Court reviewed the terms of the settlement, the submissions of the parties in support of it, and the comments received in response to the notice. After a hearing held on December 15, 1995, the Court approved the Settlement Agreement on December 15, 1995.

The States of Connecticut, Illinois, Maryland, Massachusetts, New Jersey, New York, Ohio and Wisconsin and Playmobil USA have entered into a Settlement Agreement and with the consent of the Commonwealth of Pennsylvania have agreed to the entry of this Amended Final Judgment.

NOW THEREFORE, without trial or adjudication of any issue of law or fact, before the taking of any testimony at trial, without the admission of liability or wrongdoing by Playmobil USA, and upon the consent of the parties hereto,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

**I. JURISDICTION**

The Court has jurisdiction over the subject matter of this action and the parties hereto. The Complaint raises claims against Playmobil USA under section 1 of the Sherman Act 15 U.S.C. § 1, section 4 of the Clayton Act, 15 U.S.C. § 15, section 4C of the Clayton Act, 15 U.S.C. § 15c, and section 16 of the Clayton Act, 15 U.S.C. § 26. Jurisdiction lies in this Court pursuant to 28 U.S.C. § 1337.

**II. DEFINITIONS**

As used in this Amended Final Judgment:

a. "Playmobil USA" means Playmobil USA, Inc., and its affiliates, subsidiaries, divisions and other organizational units of any kind that sells Playmobil



products as defined herein, its successors and assigns, and its present and former officers, directors, employees, agents, representatives and other persons acting on its behalf;

b. "Playmobil products" means toy figures, playsets and accessories manufactured by Playmobil's German parent, geobra Brandstaetter GmbH & Co. KG, designed around various themes;

c. "Resale price" means any price, price floor, price ceiling, price range, any mark-up formula, or margin of profit used by any dealer for pricing Playmobil products. Such a term includes, but is not limited to, any suggested, established or customary resale price or price range, as well as the retail price advertised, promoted or offered for sale by any dealer;

d. "Dealer" means any person, corporation or firm not owned by Playmobil USA that in the course of its business sells any Playmobil products; and

e. "Covered dealer" means any dealer located in the States of Connecticut, Illinois, Maryland, Massachusetts, New Jersey, New York, Ohio and Wisconsin or in the Commonwealth of Pennsylvania.

### **III. APPLICABILITY**

This Amended Final Judgment shall apply to Playmobil USA.

### **IV. MONETARY PAYMENT**

Playmobil USA will make its final payment of \$125,000 within five days of entry of the order providing for final approval of the Settlement Agreement by this Court.

### **V. INJUNCTION**

**L. Playmobil USA is restrained and enjoined for a period of five (5) years from the date of the Settlement Agreement with the Commonwealth of Pennsylvania from entering into any contract, combination, conspiracy, agreement or arrangement with any covered dealer to fix, raise, maintain or stabilize the retail prices at which Playmobil products are sold to the public, or at which covered dealers may advertise Playmobil products.**

**A. Playmobil USA is restrained and enjoined for a period of five (5) years from the date of the Settlement Agreement with the Commonwealth of Pennsylvania, from establishing a policy under which it will sell only to covered dealers that set their retail price at or above the suggested resale price or from terminating any covered dealer for pricing below its suggested resale price.**

**C. Playmobil USA is restrained and enjoined for a period of five (5) years from the date of the Settlement Agreement with the Commonwealth of Pennsylvania, from adopting or establishing any cooperative advertising policy that denies or reduces advertising rebates or allowances to a covered dealer for any reason related to that dealer's advertised prices.**

**D. Playmobil USA is restrained and enjoined for a period of five (5) years from the date of the Settlement Agreement with the Commonwealth of Pennsylvania, from terminating or threatening to terminate, failing to fill orders of, or discriminating in credit terms to, any covered dealer for Playmobil products for failing to adhere to any of Playmobil USA's suggested retail price for those products.**

**E. This Amended Final Judgment shall not be construed in any way to limit the right of Playmobil USA to suggest resale prices for its products nor to prohibit Playmobil USA from terminating any covered dealer for reasons unrelated to price discounting.**

**F. For a period of five (5) years after the date of the Settlement Agreement with the Commonwealth of Pennsylvania, Playmobil USA shall notify its authorized dealers of Playmobil products in Connecticut, Illinois, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Ohio and Wisconsin that it is their right to determine independently the prices at which they will advertise and sell Playmobil products to end-user consumers. Playmobil USA shall provide this notice by affixing a notice of disclosure (the "Disclosure") to every list of suggested retail prices and minimum advertised prices for any Playmobil product printed subsequent to the date of this Amended Final Judgment and provided to dealers. The Disclosure shall be in language substantially similar to that set forth in Exhibit 1 hereof, in bold-face type, no smaller than the typeface used to print the language the Disclosure is intended to modify.**

## **VI. COMPLIANCE**

**For purposes of determining and securing compliance with this Amended Final Judgment, duly authorized representatives of the Attorneys General of Connecticut, Illinois, Maryland, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, or Wisconsin shall be permitted upon thirty (30) days prior written notice:**

**A. access during normal office hours to any and all relevant and non-privileged books, documents, correspondence and other records in the possession, custody, or control of Playmobil USA which relate to any of the matters contained in this Amended Final Judgment or the Settlement Agreement; and**

B. subject to the reasonable convenience of Playmobil USA, to interview its directors, officers, employees, agents, and any other persons acting on its behalf, each of whom may have counsel present, relating to any matter contained in this Amended Final Judgment or the Settlement Agreement.

Provided, however, that Playmobil USA retains the right to object to any request under subparagraphs A. or B. above within ten (10) days after its receipt on the grounds that the request is not relevant to the matters contained in the Amended Final Judgment or the Settlement Agreement, or otherwise is not in accordance with law. Any such objection shall be directed to this Court for a ruling, with service by mail of the objection upon the requesting Attorney(s) General.

#### VII. REMEDIES FOR VIOLATIONS OF THIS FINAL JUDGMENT

A. The violation of any of the terms of Section V(A) of this Final Judgment by Playmobil USA shall constitute a violation of the federal antitrust laws for which civil remedies may be sought by the Attorney(s) General of Connecticut, Illinois, Maryland, Massachusetts, New Jersey, New York, Ohio, Pennsylvania or Wisconsin pursuant to 15 U.S.C. §§ 1, 15, 15c and 26 upon application to this Court.

B. If any of the foregoing Attorneys General determine that Playmobil USA has violated the terms of Section V of this Final Judgment, s/he shall give Playmobil USA notice of the violation and Playmobil USA shall have seven (7) working days to respond. Such notice need not be in writing. If the Attorney(s) General is(are) not satisfied with Playmobil USA's response, it shall notify Playmobil USA in writing and Playmobil USA shall have fifteen (15) working days to cure the violation. If after such time Playmobil USA has not cured the violation to the Attorney(s) General's satisfaction, the

Attorney(s) General may seek penalties for contempt for violation of any paragraph of this Final Judgment and with respect to alleged violations of Section V(A) may seek the civil remedies referred to in Section VII(A) above.

**VIII. JURISDICTION RETAINED**

Jurisdiction shall be retained by this Court for the purpose of enabling the Attorneys General of Connecticut, Illinois, Maryland, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, or Wisconsin or counsel for Playmobil USA to apply for such further orders and directions as may be necessary or appropriate for the construction or enforcement of this Amended Final Judgment, the modification of any of its provisions, the ruling upon any objection made pursuant to Section VI, and the punishment of violations hereof.

This Court shall have the authority to enforce the provisions of this Final Judgment.

**IX. TERMINATION OF FINAL JUDGMENT**

This Amended Final Judgment will automatically terminate on the fifth anniversary date of its initial entry, prior to amendment, without any action by any party or the Court.

So ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

\_\_\_\_\_  
United States District Judge