In The United States District Court
For The Northern District of Georgia
Atlanta Division

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	Civil Action No. 5171
NATIONAL LINEN SERVICE CORPORATION,	)	
Defendant.	)	

MEMORANDUM OF THE UNITED STATES IN RESPONSE TO THE MOTION OF NATIONAL SERVICE INDUSTRIES, INC. FOR JUDGMENT TERMINATING CONSENT DECREE

National Service Industries, Inc. ("NSI"), the successor corporation to National Linen Service Corporation, has moved this Court to terminate the Judgment, as it was then called, entered by this Court on June 28, 1956. In a stipulation between NSI and the United States, (1) NSI agreed to publish notice of its motion and invitation for comments thereon in Textile Rental and Industrial Launderer , (2) the United States agreed to publish notice in the Federal Register, and (3) the United States tentatively consented to the entry of a judgment terminating the Judgment at any time more than 70 days after the last publication of such notice.

This memorandum summarizes the Complaint that initiated this action and the resulting Judgment, explains the reason why the United States has consented to termination of the Judgment, and discusses the legal standards and precedents respecting termination or modification of consent decrees. It also discusses the procedures proposed by the United States, and agreed to by NSI, for giving public notice of the pending motion, obtaining public comment on the motion, and assuring the right of the United States to withdraw its consent after any comments are received from nonparties.

I.

THE COMPLAINT AND THE JUDGMENT

On April 25, 1955, the United States filed in this Court a civil complaint against National Linens Services, Inc. ("NLS"), the leading supplier of linen services in the Southeastern United States, charging NLS with monopolization and attempted monopolization of the linen service business in several Southern states in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2, and also of price fixing in violation of Section 1 the Sherman Act, 15 U.S.C. § 1. Specifically, the Complaint alleged that the defendant bought out hundreds of competitors, suppressed competition by providing service below its costs in areas in which the defendant faced competition, gave customers rebates and other inducements not to deal with competitors, threatened to force competitors out of business, and entered into price fixing agreements with several remaining competitors.

On June 28, 1956, the Judgment was entered against NLS. Several provisions relating to notification of third parties of any divestiture of certain subsidiaries by NSI expired by 1971.

The provisions still in effect prohibit NSI from engaging in certain conduct in the relevant geographic market. Specifically, the Judgment enjoins the defendant from combining with any linen supply company or laundry to fix prices to consumers, allocate territories or customers, or exclude any person from engaging in the linen supply business. The Judgment also enjoins the defendant from charging unreasonably low prices for the purpose of suppressing competition, and from offering to supply linens without charge or at prices that discriminate between different customers in the same trade area, where the effect may be to injure competition (except that NSI is permitted to lower its prices or offer rebates to meet competition). The Judgment further enjoins NSI from entering into any requirements contracts, from making certain potentially defamatory representations to customers about competitors of NSI, from threatening competitors or customers of competitors, and from coercing or agreeing with suppliers not to sell to competitors of NSI. Finally, the Judgment also enjoins NSI from entering into employment contracts with certain non-compete provisions and from acquiring an interest in certain competing firms.

In 1964, the name of National Linen Service Corporation became National Service Industries, Inc. The Judgment applies to two subdivisions of NSI's textile rental division: National Linen Service and National Healthcare Linen Service.

II.

LEGAL STANDARDS APPLICABLE TO THE TERMINATION OF AN ANTITRUST DECREE WITH THE CONSENT OF THE GOVERNMENT

This Court has jurisdiction to modify or terminate the Judgment pursuant to Section XIX of the Judgment, Rule 60(b)(5) of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 60(b)(5), and "principles inherent in the jurisdiction of the chancery." United States v. Swift & Co., 286 U.S. 106, 114 (1932).

Where, as here, the United States tentatively has consented to a proposed termination or modification of a judgment in a government antitrust case, the issue before the Court is whether termination or modification is in the public interest. See, e.g., United States v. Western Elec. Co., 993 F.2d 1572, 1576 (D.C. Cir. 1993); United States v. Western Elec. Co., 900 F.2d 283, 305 (D.C. Cir. 1990), cert. denied, 111 S. Ct. 283 (1990); United States v. Loew's, Inc., 783 F. Supp. 211 (S.D.N.Y. 1992); United States v. Columbia Artists Management, Inc., 662 F. Supp. 865, 869-70 (S.D.N.Y. 1987), citing United States v. Swift & Co., 1975-1 Trade Cas. (CCH) ¶ 60,201, at 65,702-03, 65,706 (N.D. Ill. 1975); cf. United States v. American Cyanamid Co., 556 F. Supp. 361, 367 (S.D.N.Y. 1983), rev'd. on other grounds, 719 F.2d 558 (2d Cir. 1983), cert. denied, 465 U.S. 1101 (1984). This is the same standard that a District Court applies in reviewing an initial consent judgment in a government antitrust case. See 15 U.S.C. § 16(e); Western Elec. Co., 900 F.2d at 295; United States v. AT&T, 552 F. Supp. 131, 147 n.67 (D.D.C. 1982), aff'd sub nom, Maryland v. United States, 406 U.S. 1001 (1983); United States v. Radio Corp. of Am., 46 F. Supp. 654, 656 (D. Del. 1942), appeal dismissed, 318 U.S. 796 (1943).

The Supreme Court has held that where the words "public interest" appear in federal statutes designed to regulate public sector behavior, they "take meaning from the purposes of

the regulatory legislation." NAACP v. FPC, 425 U.S. 662, 669 (1976); see also System Fed'n No. 91 v. Wright, 364 U.S. 642, 651 (1961). The purpose of the antitrust laws, the "regulatory legislation" involved here, is to protect competition. E.g., United States v. Penn-Olin Chem. Co., 378 U.S. 158, 170 (1964) (antitrust laws reflect "a national policy enunciated by the Congress to preserve and promote a free competitive economy."). Thus, the relevant question before the Court at this time is whether termination of the Judgment would serve the public interest in "free and unfettered competition as the rule of trade." Northern Pac. Ry. Co. v. United States, 356 U.S. 1, 4 (1958); see also Western Elec. Co., 900 F.2d at 308; United States v. American Cyanamid, 719 F.2d 558, 565 (2d Cir. 1983), cert. denied, 405 U.S. 1101 (1984); United States v. Loew's, Inc., 783 F. Supp. at 213.

It has long been recognized that the government has broad discretion in settling antitrust litigation on terms that will best serve the public interest in competition. See Sam Fox Pub'g Co. v. United States, 366 U.S. 683, 689 (1961). The court's role in determining whether the initial entry of a consent decree is in the public interest, absent a showing of abuse discretion or a failure to discharge its duty on the party of the government, is to determine whether the government's explanation is reasoned and not to substitute its own opinion, United States v. Mid-America Dairymen, Inc., 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977); see also United States v. Bechtel Corp., 648 F.2d 660, 666 (9th Cir. 1981), cert. denied, 454 U.S. 1083 (1981) , quoting United States v. National Broad. Co., 449 F. Supp. 1127, 1143 (C.D. Cal. 1978). The government may reach any of a range of settlements that are consistent with the public interest. See, e.g., Western Elec., 900 F.2d at 307-09; Bechtel,

648 F.2d at 665-66; United States v. Gillette Co., 406 F. Supp. 713, 716 (D. Mass. 1975). The court's role is to conduct a limited review to "insur[e] that the government has not breached its duty to the public in consenting to the decree," Bechtel, 648 F.2d at 666, through malfeasance or by acting irrationally.

The standard is the same when the government consents to the termination or modification of an antitrust judgment. Swift & Co., 1975-1 Trade Cas. (CCH) ¶ 60,201, at 65,702-03. Where the Department of Justice has offered a reasoned and reasonable explanation of why the termination or modification vindicates the public interest in free and unfettered competition, and there is no showing of abuse of discretion or corruption affecting the government's recommendation, the Court should accept the Department's conclusion concerning the appropriateness of termination or modification.

III.

REASONS WHY THE UNITED STATES TENTATIVELY CONSENTS TO TERMINATION OF A JUDGMENT

The nature of competition for linen services has changed dramatically from what it was in 1956 and will undoubtably continue to change in the future. Many new linen suppliers and uniform companies have entered the relevant geographic market and now compete successfully against NSI. The Judgment has accomplished its remedial objective of permitting competition to develop in these markets, so that the alleged predatory practices that gave rise to the Complaint in 1955 are unlikely to be effective today. The remaining injunctive provisions do not proscribe any conduct that is not subject to the Sherman Act and case law. Indeed, the

remaining injunctions may prevent competition by NSI that could only benefit consumers. For all of the foregoing reasons, the United States believes that termination of the Judgment is in the public interest.

IV.

PROPOSED PROCEDURES FOR GIVING PUBLIC NOTICE OF THE PENDING MOTION AND INVITING COMMENT THEREON

The opinion in Swift & Co., 1975-1 Trade Cas. (CCH) ¶ 60,201, at 65,703, articulated a court's responsibility to implement procedures that will give nonparties notice of, and an opportunity to comment upon, antitrust judgment modifications proposed by consent of the parties:

> Cognizant . . . of the public interest in competitive economic activity, established chancery powers and duties, and the occasional fallibility of the Government, the court is, at the very least, obligated to ensure that the public, and all interested parties, have received adequate notice of the proposed modification. . . . (Footnote omitted.)

The Department of Justice believes that giving the public notice of the filing of a motion to terminate the Judgment in a government antitrust case, and an opportunity to comment upon that motion, is generally necessary to ensure that both the Department and the Court properly assess the public interest. Accordingly, over the years, the Department has adopted and refined a policy of consenting to motions to modify or terminate Judgments in antitrust actions only on condition that an appropriate effort be undertaken to notify potentially interested persons of the pendency of the motion. In the case at bar, the United States has proposed, and NSI has agreed to, the following:

1. The Department will publish in the Federal Register a notice announcing NSI's motion and the Department's tentative consent to it, summarizing the Complaint and Judgment, describing the procedures for inspecting and obtaining copies of relevant papers, and inviting the submission of comments.

2. NSI will publish notice of its motion in two consecutive issues of Textile Rental and two consecutive issues of Industrial Launderer. These periodicals are trade journals likely to be read by persons interested in the market affected by the Judgment. The published notices will provide for public comment during the following 60 days.

3. The Department of Justice will file with the Court copies of all comments that it receives.

4. The parties will stipulate that the Court will not rule upon the motion for at least 70 days after the last publication by defendant of the notices described above (and thus for at least 10 days after the close of the period for public comments), and the Department will reserve the right to respond to comments or withdraw its consent to the motion at any time until an order modifying or terminating the Judgment is entered.

This procedure is designed to provide all potentially interested persons with notice that a motion to terminate the Judgment is pending and an adequate opportunity to comment thereon. NSI has agreed to follow this procedure, including publication of appropriate notices. The parties are therefore submitting to the Court a separate proposed order establishing this procedural approach, asking that it be entered forthwith.

V.

CONCLUSION

For the foregoing reasons, the United States (1) asks the Court to enter the order submitted herewith directing publication of notice of NSI's motion, and (2) tentatively consents to the termination of the Judgment herein.

Dated:

_____/s/_____

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