

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
AMERICAN SOCIETY OF CIVIL  
ENGINEERS,  
Defendant.

Civil No. 72-CIV-1776  
Filed: May 1, 1972

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 to obtain equitable relief 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 Act of Congress of July 2, 1890 (15 U.S.C. § 4), as amended, commonly known as the Sherman Act, in order to prevent and restrain the continuing violation by the defendant, as hereinafter alleged, of Section 1 of said Act (15 U.S.C. § 1).

2. The defendant, American Society of Civil Engineers, maintains offices, transacts business, and is found within the Southern District of New York.

II

DEFENDANT

3. The American Society of Civil Engineers (hereinafter referred to as "ASCE") is made the defendant herein. ASCE is a non-profit membership corporation organized and existing under the laws of the State of New York, with its principal place of business in New York, New York. ASCE's membership

consists primarily of civil engineers or persons qualified in another branch of engineering.

### III

#### TRADE AND COMMERCE

4. The ASCE has approximately 64,000 members located throughout the United States. These engineers design and supervise the construction of roads, bridges, dams, industrial plants and other structures located throughout the United States and in foreign countries. ASCE members may be, and often are, licensed to perform engineering services in several states, and members regularly solicit business and perform services in states other than the state in which they maintain their principal place of business.

5. There is a regular, continuous and substantial flow in interstate commerce of the services of ASCE members and the materials used in the design and construction of projects designed by them and constructed under their supervision. The activities of the ASCE and its members, as described herein, are within the flow of interstate commerce and have an effect upon that commerce.

6. Persons seeking engineering services may and often do invite one or more engineers to submit proposals for specific projects. These invitations state the engineering services required and request that engineers submit evidence of their qualifications and availability for the particular project. An invitation, or request for a proposal, may also specify that the engineer include in his proposal a statement of the fee, or estimate of the fee, that he will charge for performing the requested services. Proposals containing statements of fees to be charged for engineering services are termed "priced proposals".

#### IV

##### OFFENSE ALLEGED

7. For many years past, and continuing up to and including the date of the filing of this complaint, the defendant and its members have been engaged in a combination in unreasonable restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act. Said offense is continuing and will continue unless the relief hereinafter prayed for is granted.

8. The unlawful combination has consisted of a continuing agreement, understanding and concert of action among the defendant and its members, the substantial terms of which have been and are that members of the ASCE will not invite or submit priced proposals under conditions that constitute price competition.

9. For the purpose of effectuating the aforesaid combination, the defendant and its members have, among other things, adopted, published, distributed and enforced a Code of Ethics which, until on or about October 19, 1971, contained a provision expressly prohibiting the invitation or submission of priced proposals under conditions that constitute price competition.

#### V

##### EFFECTS

10. The aforesaid combination has had the following effects, among others:

(a) Price competition among ASCE members in the sale of their services has been suppressed and eliminated;

(b) Customers requiring the services offered by members of the ASCE have been deprived of the

benefits of free and open competition in the sale of such services.

PRAYER

WHEREFORE, plaintiff prays:

1. That the aforesaid combination in unreasonable restraint of interstate trade and commerce be adjudged and decreed to be in violation of Section 1 of the Sherman Act.

2. That defendant and each of its officers, directors, agents, employees, and successors and assigns, and all persons acting under, through or for such defendant, be perpetually enjoined from continuing, maintaining or renewing the aforesaid combination, and from entering into, maintaining or participating in any contract, agreement, understanding, plan, program or other arrangement having the purpose or effect of continuing, maintaining or renewing such combination.

3. That the defendant be perpetually enjoined from incorporating in its Code of Ethics, or any other rules, bylaws or statements of policy, provisions having as their purpose or effect the suppression or elimination of price competition among defendant's members.

4. That the defendant be directed to furnish to each of its members, and to each individual, organization, firm or corporation which hereafter becomes a member, a copy of any final judgment which may be entered in this case, and that the defendant be directed to publish the text of any such final judgment in one or more trade journals of general circulation in the engineering and construction fields.

5. That the plaintiff have such other and further relief that the nature of the case may require and the Court may deem just and proper.

6. That the plaintiff recover the costs of this suit.

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