

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

PLAINTIFF,

v.

AIG TRADING CORPORATION;
BP EXPLORATION & OIL INC.; and
CARGILL INTERNATIONAL, S.A.

DEFENDANTS.

Civil Action No. 97 CIV 5260

Honorable Deborah A. Batts

MOTION OF THE UNITED STATES
FOR ENTRY OF STIPULATION AND ORDER

Pursuant to Section 2 (b) of the Antitrust Procedures and Penalties Act ("Tunney Act") , 15 U.S.C. 16 (b) - (h), the United States moves for entry of the Stipulation and Order that would terminate this civil antitrust proceeding.

I. INTRODUCTION

This action was initiated by the United States with the filing of a complaint on July 18, 1997. The complaint charges that the defendants - traders of Brent spread contracts and contracts for differences (CFDs) - had violated Section 1 of the Sherman Act, 15 U.S.C. 1, by conspiring to exchange current and prospective brokerage commission information with the purpose and effect of lowering

commissions paid to brokers located in the United States for arranging the purchase and sale of Brent spread contracts and CFDs.

With the filing of its complaint, the United States filed a proposed Stipulation and Order, signed by all the defendants, which, if entered by the Court, would terminate the litigation. The United States also filed a Competitive Impact Statement ("CIS") explaining the basis for the complaint and the reasons why entry of the Stipulation and Order is "in the public interest." 15 U.S.C. 16 (b). The defendants subsequently all filed statements concerning communications made on their behalf, as required by the Tunney Act. 15 U.S.C. 16 (g).

The United States has not received any public comments concerning the proposed Stipulation and Order.

Attached to this Motion for Entry of Stipulation and Order is a Certificate of Compliance establishing that the Tunney Act requirements for entry of the Stipulation and Order have been met.

Entry of the Stipulation and Order will terminate the civil antitrust action initiated by the United States against the defendants, except that the Court will retain jurisdiction to enable any of the parties to apply to the Court for such further orders and directions as may be necessary or appropriate for the construction or implementation of the Stipulation and Order, for the enforcement or modification of any of its provisions, or for punishment by contempt.

II. PUBLIC INTEREST DETERMINATION

Before entering the Stipulation and Order, the Court must determine that its entry is in the public interest. 15 U.S.C. 16 (e). This determination can properly be made on the basis of the record herein. The Department of Justice has broad discretion in controlling government antitrust litigation, including negotiating settlements and determining whether such settlements are in the public interest. The relief provided by the Stipulation and Order adequately remedies the antitrust violation alleged in the complaint and reasonably resolves the competitive concerns that led to the filing of this case.

When the United States proposes to settle a civil antitrust case on consent, the Tunney Act requires the district court to determine whether "the entry of such a judgement is in the public interest." 15 U.S.C. 16(e). The court is not, however, required "to determine whether the resulting array of rights and liabilities 'is one that will *best* serve society,' " but only to assess whether the resulting settlement is " 'within the *reaches* of the public interest.' " United States v. Microsoft Corp., 56 F.3d 1448, 1460 (D.C. Cir. 1995) (emphasis in original); accord, United States v. Western Elec. Co., 993 F.2d 1572, 1576 (D.C. Cir.), cert. denied 114 S. Ct. 487 (1993); see also United States v. Bechtel, 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981); United States v. Gillette Co., 406 F. Supp. 713, 716 (D. Mass. 1975). For this reason, a court should not refuse to enter an order terminating a civil antitrust case initiated by the United States "unless 'it has exceptional confidence that adverse antitrust consequences will result - perhaps akin to the confidence that would justify a court in overturning the predictive judgments of an

administrative agency.’ ” Microsoft, 56 F.3d at 1460 (quoting Western Elec., 993 F.2d at 1577).

Tunney Act review is confined to the terms of the proposed relief and their adequacy as remedies for the violations alleged in the complaint. Microsoft, 56 F.3d at 1459. Thus, in this case, the Court need decide only whether the proposed order is reasonably directed toward addressing the competitive concerns raised by the alleged agreement to exchange current and prospective brokerage commission information.

It is the view of the United States, as more fully explained in the CIS, that the Stipulation and Order is in the public interest.¹

Accordingly, the Court is free to enter the Stipulation and Order without further notice to any party or other proceedings (see Stipulation and Order, IX) , upon a determination that entry would be in the public interest and that the United States and the defendants have fulfilled the requirements of the Tunney Act.

¹ As noted, no public comments concerning the proposed Stipulation and Order have been received by the United States.

III. CONCLUSION

For the reasons set forth in the CIS, entry of the Stipulation and Order is in the public interest. Entry of the Stipulation and Order is timely. The United States moves the Court to enter the Stipulation and Order.

Dated: October 9, 1997
New York, N.Y.

Respectfully submitted,

RALPH T. GIORDANO (RG-0114)
Chief, New York Office

PHILIP F. CODY (PC-3521)
JOHN J. GREENE (JG-8281)
EDWARD FRIEDMAN (EF-0245)
JOHN W. McREYNOLDS (JM-0441)

Attorneys
U.S. Department of Justice
Antitrust Division
26 Federal Plaza, Room 3630
New York, New York 10278
(212) 264-0395
(212) 264-0678 (fax)