

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,)	
<i>Plaintiff,</i>)	Civil Action No.: 1:10-cv-00659
)	
v.)	
)	Judge: Hon. Gladys Kessler
BAKER HUGHES INCORPORATED)	
<i>and</i>)	
)	
BJ SERVICES COMPANY,)	Date Filed: July 23, 2010
)	
<i>Defendants.</i>)	
)	
_____)	

**UNITED STATES’ MOTION AND SUPPORTING MEMORANDUM
TO ENTER FINAL JUDGMENT**

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (“APPA”), plaintiff United States of America (“United States”) moves for entry of the proposed Final Judgment filed in this civil antitrust proceeding. The proposed Final Judgment may be entered at this time without further hearing if the Court determines that entry is in the public interest. The Competitive Impact Statement (“CIS”), filed in this matter on April 27, 2010, explains why entry of the proposed Final Judgment would be in the public interest. The United States is filing simultaneously with this Motion and Memorandum a Certificate of Compliance setting forth the steps taken by the parties to comply with all applicable provisions of the APPA and certifying that the statutory waiting period has expired.

I. Background

On April 27, 2010, the United States filed a civil antitrust Complaint alleging that the \$5.5 billion proposed merger of Baker Hughes Incorporated (“Baker Hughes”) with BJ Services Company (“BJ Services”) would substantially lessen competition in the provision of vessel stimulation services in the U.S. Gulf of Mexico (“Gulf”) in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. Vessel stimulation services are pumping services provided by specially equipped vessels designed to prevent formation sand from entering the wellbore after a well has been drilled and interfering with the flow of oil and natural gas. The Complaint alleges that Baker Hughes and BJ Services are two of only four companies that provide vessel stimulation services in the Gulf and compete directly on price and quality of services. As alleged in the Complaint, the transaction would eliminate this competition. The merged firm and the two other firms providing vessel stimulation services in the Gulf would likely compete less aggressively, leading to higher prices and a reduction in service quality. Accordingly, the Complaint seeks to permanently enjoin Baker Hughes’ merger with BJ Services as a violation of Section 7 of the Clayton Act.

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order (“Hold Separate”) and a proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition, and a Competitive Impact Statement (“CIS”). The Court signed and entered the Hold Separate on April 28, 2010. The proposed Final Judgment requires defendants to create a new competitor for vessel stimulation services by divesting their interests in two specially-equipped stimulation vessels, Baker Hughes’ HR

Hughes and BJ Services' Blue Ray, and other assets used to support their offshore stimulation services operations, including Baker Hughes' dock facilities at Port Fourchon, Louisiana, Baker Hughes' Gulf stimulation fluids assets, and BJ Services' sand control tool assets. The proposed Final Judgment specifies that the divestiture is to occur within sixty days after filing the Complaint or five days after notice of entry of the Final Judgment by the Court, whichever is later.

The proposed Final Judgment permits the United States to extend the divestiture period one or more times for a total of sixty days. If defendants do not complete the required divestiture within the prescribed time, then, under the terms of the proposed Final Judgment, this Court will appoint a trustee to sell the Divestiture Assets.

Until the required divestiture is completed, the Hold Separate and the proposed Final Judgment require that BJ Services' U.S. operations be held separate and apart from Baker Hughes. The Hold Separate and the proposed Final Judgment also require that the Divestiture Assets be preserved in their current or improved state and that BJ Services remain an independent, ongoing and economically viable competitor until the divestiture has been completed.

The CIS explains the basis for the Complaint and the reasons why entry of the proposed Final Judgment would be in the public interest. The Hold Separate provides that the proposed Final Judgment may be entered by the Court after the completion of the procedures required by the APPA.

II. Compliance with the APPA

The APPA requires a sixty-day period for the submission of public comments on the proposed Final Judgment. *See* 15 U.S.C. §16(b). In compliance with the APPA, the United States filed the CIS on April 27, 2010; published the proposed Final Judgment and CIS in the Federal Register on May 6, 2010 (*see United States v. Baker Hughes Incorporated and BJ Services Company*, 75 Fed. Reg. 24973); and caused to be published summaries of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, in the *Washington Post* for seven days on May 3-7 and 10-11, 2010.

The sixty-day period for public comments ended on July 12, 2010, and the United States received no comments. Attached is a Certificate of Compliance that states that all requirements of the APPA have been satisfied. It is now appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the proposed Final Judgment.

III. Standard of Judicial Review

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment “is in the public interest.” 15 U.S.C. § 16(e)(1). In making that determination in accordance with the statute, the court shall consider:

- (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered,

whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

- (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A)-(B).

The United States set forth the public interest standard under the APPA in its CIS and incorporates those statements herein. The United States alleges in its Complaint that the merger of Baker Hughes and BJ Services would substantially lessen competition in the Gulf in the provision of vessel stimulation services, which likely would result in higher prices and decreased quality of service. The remedy in the proposed Final Judgment resolves the alleged competitive effects by requiring defendants to divest assets necessary to create a new, independent competitor in the Gulf vessel stimulation service business. Defendants are required to divest these assets to a viable purchaser approved by the United States. The public, including affected competitors and customers, has had the opportunity to comment on the proposed Final Judgment as required by law, and no comments have been received. The proposed settlement is consistent with the public interest.

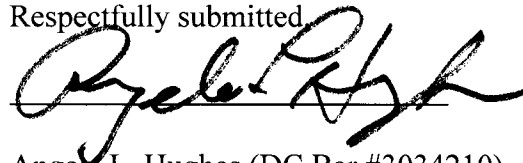
IV. Conclusion

For the reasons set forth in this Motion and Memorandum and in the CIS, the Court should find that the proposed Final Judgment is in the public interest and should enter the Final Judgment without further hearings. The United States respectfully requests that the Final

Judgment attached hereto be entered as soon as possible.

Dated: July 23, 2010

Respectfully submitted

A handwritten signature in black ink, appearing to read "Angela L. Hughes", written over a horizontal line.

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