UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff; v. BAROID CORPORATION, BAROID DRILLING FLUIDS, INC., DB STRATABIT (USA) INC., and DRESSER INDUSTRIES, INC.; Defendants.	)	Civil Action No.: 93-2621-SS

MEMORANDUM OF THE UNITED STATES IN SUPPORT
OF MOTION TO MODIFY FINAL JUDGMENT

The United States and Diamond Products International ("DPI") have moved this Court to modify the Final Judgment entered in this action. This memorandum summarizes the Complaint that initiated this action and the resulting Judgment, describes the proposed modification, explains the reasons why the United States has tentatively consented to modification of the Judgment, and discusses the legal standards and precedents respecting modification of consent decrees. Notice of the proposed modification will be published and comments invited. The procedures that will be followed are described in the United States' Explanation of Modification Procedures, also filed today.

I. THE COMPLAINT AND THE JUDGMENT

On December 23, 1993, the United States filed a civil complaint alleging that the proposed

acquisition of Baroid Corporation ("Baroid") by Dresser Industries, Inc. ("Dresser") would violate Section 7 of the Clayton Act (15 U.S.C. §7). The Complaint alleged that the effect of the merger would likely substantially lessen competition in the manufacture and sale in the United States of two oil field service products: drilling fluids and diamond drill bits. Also on December 23, 1993, the United States filed a proposed Final Judgment under which the defendants were required to resolve the competitive problem in the drilling fluids business by divesting either Baroid's or Dresser's drilling fluid business, and to resolve the competitive problem in the diamond drill bits business by divesting Baroid's U.S. diamond drill bit business. The Court entered the Final Judgment on April 12, 1994.

In the summer of 1994, the United States approved the divestiture by Dresser of Baroid's U.S. diamond drill bit business to International Superior Products, Inc., which is now known as DPI. Paragraph V.F. of the Final Judgment placed restrictions upon transactions that DPI could enter with the divested drill bit business during the ten-year term of the Judgment. The second sentence of that paragraph states:

> The purchaser of Baroid's diamond bit business shall not sell that business to, or combine that business with the diamond drill bit operations of, Dresser Industries, Inc., Baker Hughes, Inc., Camco, Inc., Smith International, Inc., or any of their affiliates or subsidiaries during the life of this decree.

The restriction on DPI will end on April 12, 2004.

II. DESCRIPTION OF THE PROPOSED MODIFICATION

The United States proposes changing Paragraph V.F. to eliminate the prohibition on selling DPI's diamond drill bit business to Baker Hughes, Inc., Camco, Inc. (now part of Schlumberger Ltd.), or Smith International, Inc., or any of their subsidiaries or affiliates, or combining the business with any of those three firms' diamond drill bit operations and would instead require DPI

to give notice of any such proposed transaction so that the United States can evaluate the likely competitive effects of the proposed acquisition. The Final Judgment would continue to bar DPI from selling its diamond drill bit business to, or combining that business with the diamond drill bit operations, of Dresser, the firm required by the Final Judgment to divest the diamond bit business in the first instance.[1]

Transactions involving the other companies would no longer be prohibited but would instead be subject to a notice provision requiring the parties to provide the Department with information about the proposed transaction in advance. Such notice would be given under the Hart-Scott-Rodino Act requirements if the transaction met the standards for notification under the Act. If the transaction did not meet the standards, notice would be required under the decree, as modified. With the proposed modification, the second sentence would read as follows:

During the life of this decree, the purchaser of Baroid's diamond bit business

> (1) shall not sell that business to, or combine that business with the diamond drill bit operations of, Dresser Industries, Inc. (now part of Halliburton Company) or any of its affiliates or subsidiaries;
>
> (2) shall not sell that business to, or combine that business with the diamond drill bit operations of, Baker Hughes, Inc., Camco, Inc. (now part of Schlumberger Ltd.), Smith International, Inc., or any of their affiliates or subsidiaries unless it complies with the following notice provision: If such transaction is not otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the "HSR Act"), the purchaser of Baroid's diamond bit business shall provide such notification to plaintiff in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended. Notification shall be provided at least thirty (30) days prior to the proposed sale or combination, and shall include, beyond what may

[1] Since Dresser made the original divestiture under the Final Judgment, an acquisition by it of the divested diamond drill bit business would undo the divestiture and essentially terminate the decree. The Department does not believe it would be appropriate to remove the prohibition on a combination with or sale to Dresser. Dresser is now part of Halliburton Company

be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of plaintiff make a written request for additional information, the purchaser of Baroid's diamond bit business shall not consummate the proposed sale or combination until twenty (20) days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

III. THE LEGAL STANDARDS APPLICABLE TO MODIFICATION OF AN ANTITRUST JUDGMENT WITH THE CONSENT OF THE GOVERNMENT

This Court has jurisdiction to modify the Final Judgment pursuant to Paragraph XIV of the Judgment, 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); see also United States v. Western Electric Co. Inc., 46 F.3d 1198, 1202 (D.C. Cir. 1995); In re Grand Jury Proceedings, 827 F. 2d 868, 873 (2d Cir. 1987). Where, as here, the United States has consented to a proposed modification of a judgment, the issue before the Court is whether 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); United States v. Loew's, Inc., 783 F. Supp. 211, 213 (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 (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). This is the same standard that a district court applies in reviewing an initial consent judgment in a government antitrust case.

The purpose of the antitrust laws is to protect competition, e.g., United States v. Penn-Olin Chemical 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"). The relevant question before the court therefore is whether modification of the Judgment would serve the public interest in "free and unfettered competition as the rule of trade." Northern Pacific Railway Co. v. United States, 356 U.S. 1, 4 (1958); see also United States v. Western Electric 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. Columbia Artists Management, 662 F. Supp. 865, 870 (S.D.N.Y. 1987).

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 Publishing Co. v. United States, 366 U.S. 683, 689 (1961).[2] The judiciary's role in determining whether the initial entry of a consent decree is in the public interest, absent a showing of abuse of discretion or a failure to discharge its duty on the part of the government, is to "inquire . . . into the purpose, meaning, and efficacy of the decree." United States v. Microsoft, 56 F.3d 1448, 1462 (D.C. Cir. 1995). The purpose of such inquiry is to assess the decree's clarity and the adequacy of the compliance mechanism decree. Ibid.; see also 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)(citing United States v. National Broadcasting Co., 449 F. Supp. 1127, 1143 (C.D. Cal. 1978) (quoting United States v. Gillette Co., 406 F. Supp. 713, 716 (D. Mass. 1975)). Where the Department of Justice has offered a reasoned and reasonable

[2] *Cf.* Control Data Corp. v. International Business Machines Corp., 306 F. Supp. 839, 845 (D. Minn. 1969), *aff'd sub nom.* Data Processing Financial & General Corp. v. International Business Machines Corp., 430 F.2d 1277 (8th Cir. 1970) ("The Attorney General is the representative of the public interest in antitrust cases brought by the Government.").

explanation of why the modification vindicates the public interest in free and unfettered competition, the modification is clear and provides an adequate compliance mechanism, 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 modification.[3]

IV. MODIFICATION OF THE FINAL JUDGMENT IS IN THE PUBLIC INTEREST

Paragraph V.F. prohibited certain transactions between the purchaser of the divested diamond drill bit business and its major competitors for ten years. The provision was designed to allow the purchaser of the divested assets to develop independent of its most significant competitors. Almost six years have passed since DPI purchased the divestiture assets, and the Department of Justice believes it would be in the public interest to change the provision so that a transaction between DPI and Baker Hughes, Inc., Camco, Inc. or Smith International, Inc. will not be absolutely barred but instead will be reviewed under the antitrust laws like almost all other transactions. If DPI proposes a transaction with any of these competitors, the modified Paragraph V.F. will provide the Department with the opportunity to obtain information about the transaction and conduct an analysis to determine whether the transaction would violate the antitrust laws. If the United States concludes that the transaction would be anticompetitive, it will have the

[3]Over the years, courts have approved a large number of consent orders modifying or terminating government antitrust judgments. See, e.g., United States v. National Broadcasting Company, Inc., et al., 842 F. Supp. 402 (C.D. Cal. 1993); United States v. Loew's Inc., 783 F. Supp. 211 (S.D.N.Y. 1992); United States v. Saks & & Co., 1992-1 Trade Cas. (CCH) ¶ 69,845 (S.D. N.Y. 1992); United States v. GTE Corp., 1991-2 Trade Cas. (CCH) ¶ 69,626 (D.D.C. 1991); United States v. The House of Vision-Belgard-Spero, Inc., 1991-1 Trade Cas. (CCH) ¶ 69,370 (N.D. Ill. 1990); United States v. E.I. duPont de Nemours and Co., 1990-2 Trade Cas. (CCH) ¶ 69,222 (N.D. Ill. 1990); and United States v. Union Camp Corp., 1990-1 Trade Cas. (CCH) ¶ 69,000 (E.D. Va. 1990).

opportunity to seek to enjoin it. The Final Judgment will continue to prohibit a sale to or combination with Dresser, the firm subject to the divestiture requirement by the Final Judgment in the first instance.

V. CONCLUSION

For the foregoing reasons, the United States tentatively consents to the modification of the Final Judgment.

Dated: March 30, 2000

Respectfully submitted,

"/s/"

Angela L. Hughes
State of Florida #211052
Attorney, Antitrust Division
U.S. Department of Justice
325 7th Street, N.W.
Washington, D.C. 20530
Telephone: (202) 307-6410
Facsimile: (202) 307-2784
Attorney For Plaintiff United States