

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

UNITED STATES OF AMERICA,)	
)	
)	
Plaintiff,)	
)	Case No. 98-CV-2340(TPJ)
v.)	
)	Judge Thomas Penfield Jackson
HALLIBURTON COMPANY, <u>et al.</u> ,)	
)	
)	
Defendants.)	
)	

PLAINTIFF’S RESPONSE TO PUBLIC COMMENT

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C.A. § 16 (b)-(h) (1997) (“Tunney Act”), the United States hereby responds to the single public comment received regarding the proposed Final Judgment in this case.

I.

Background

On September 29, 1998, the United States Department of Justice (“the Department”) filed the Complaint in this matter. The Complaint alleges that the proposed merger of Halliburton Company (“Halliburton”) and Dresser Industries, Inc. (“Dresser”) would combine two of only four companies that provide logging-while-drilling (“LWD”) tools and services for oil and natural gas drilling and are the only sources of current and likely future innovations in new or improved LWD tools. LWD tools provide data during drilling for oil on the type of formation being drilled, whether there is oil in the formation, and the ease with which the oil can be

extracted from the formation. LWD tools are mounted on the drill string and measure and transmit data while the drilling is ongoing that allow the drillers to determine if changes should be made in the drilling. Also mounted on the drill string with LWD tools are measurement-while-drilling (“MWD”) tools. MWD tools measure and transmit data while the drilling is ongoing about the direction and angle of the drill bit. Because it is necessary that LWD tools and MWD tools be compatible, customers who want to use both types of tools on a particular drilling project usually obtain them from the same company. The proposed merger would reduce competition and likely lead to higher prices for LWD services, reduce LWD service quality, and slow the pace of LWD-related innovation, in violation of Section 7 of the Clayton Act, 15 U.S.C.A. § 18 (1997).

Simultaneously with the filing of the Complaint, the Plaintiff filed the proposed Final Judgment and a Stipulation and Order signed by all the parties that allows for entry of the Final Judgment following compliance with the Tunney Act. A Competitive Impact Statement (“CIS”) was also filed, and subsequently published in the Federal Register on November 2, 1998. The CIS explains in detail the provisions of the proposed Final Judgment, the nature and purposes of these proceedings, and the transaction giving rise to the alleged violation.

To prevent the competitive harm, the proposed Final Judgment requires the defendants to divest Halliburton’s worldwide LWD business, including virtually all of Halliburton’s LWD tools, enough of its MWD tools for use with the LWD tools, manufacturing, workshop, and testing and repair equipment, a U.S. facility, the right to hire employees of the LWD business,

and worldwide, royalty-free, irrevocable licenses to the intellectual property used in connection with the use, manufacture or sale of the transferred tools.

The sixty-day comment period for public comments expired on January 1, 1999. The Department received only one comment.¹ The comment was prepared by Mr. Geoffrey A. Mantooth, an attorney, on behalf of his client, Mr. Serge A. Scherbatskoy.

II.

Response to the Public Comment

Mr. Mantooth observes that the proposed Final Judgment “attempts to distinguish between ‘LWD Service’ and ‘MWD Services,’ and allows Halliburton to keep some of its MWD Services.” Mr. Mantooth then states that the proposed Final Judgment “does not give any basis or reason for the definitions of LWD and MWD. The distinction between LWD and MWD appears to arbitrary and without merit.” Mr. Mantooth continues by citing classifications of LWD and MWD tools that appear in Schedule A of the proposed Final Judgment, contrasting these classifications with descriptions appearing in an industry trade journal (copy attached to his comment), and concluding that in that particular journal “the distinction between LWD and MWD is clearly blurred.” Mr. Mantooth ends his letter with a request for “a more realistic definition” of LWD Services. He provides no suggestions for doing so.

¹ The comment is attached. The Department plans to publish promptly the comment and this response in the Federal Register. The Department will provide the Court with a certificate of compliance with the requirements of the Tunney Act and file a motion for entry of the Final Judgment once publication takes place.

Mr. Mantooth's comment appears to be arguing either that the Department should have alleged a broader market and required divestiture of more MWD assets, or that the proposed Final Judgment's description of the divestiture assets is not sufficiently specific or clear. Neither argument is adequate to support a conclusion that the public interest would not be served by entry of the proposed Final Judgment.

The Department defined the product market as LWD services for offshore drilling projects. This definition, which excluded MWD services, was based on investigation and analysis, using judicial precedent and the Horizontal Merger Guidelines issued jointly by the Department and the Federal Trade Commission. As is set forth in paragraphs 10 and 11 of the Complaint, MWD tools and LWD tools provide different measurements -- the former measure the direction and angle of the drill bit, while the latter evaluate the formation through which the drill bit is cutting. Many drillers purchase only MWD services, and there are a number of firms that provide MWD services that do not supply LWD services. While the component used to transmit data from MWD tools does share characteristics with the component used to transmit data from LWD tools, the tools themselves are distinct. Mr. Mantooth's attachment to his letter focuses on the data transmission components, not on the tools.²

² While Mr. Mantooth may believe the Department should have alleged a broader product market, the public interest standard set forth in the Tunney Act does not extend "to evaluate claims that the government did not make and to inquire as to why they were not made." United States v. Microsoft Corp., 56 F.3d 1448, 1459 (D.C. Cir. 1995); see also United States v. Associated Milk Producers, Inc., 534 F.2d 113, 117-18 (8th Cir. 1976). Mr. Mantooth's comment, to the extent it challenges the Department's product market, does not therefore provide a reason to find that the proposed Final Judgment fails to satisfy the public interest.

Mr. Mantooth may not intend to disagree with the Department's product market, but simply expressing a concern that there is insufficient specificity in the description of the divestiture assets. The Department believes that such a concern is unwarranted. Although there are similarities in the two pieces of equipment cited in the attachment to Mr. Mantooth's comment, the Department believes the list of tools in Schedule A to the proposed Final Judgment is sufficiently specific. HDS1, which is used to transmit data from MWD tools, and HDSM, which is used to transmit data from LWD tools, are distinct products. The Department is confident that prospective purchasers will be able to get the equipment contemplated by the proposed Final Judgment, and that the Department will be able to ensure that its contemplated remedy is effected.

III.

Conclusion

After careful consideration of the comment, the Plaintiff concludes that Mr. Mantooth's comment does not change its determination that entry of the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint and is in the public interest. The Plaintiff will move the Court to enter the proposed Final

Judgment after the public comment and this Response has been published in the Federal Register, as 15 U.S.C. § 16(d) requires.

Dated this 27th day of January, 1999.

Respectfully submitted,

“/s/”

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Certificate of Service

I hereby certify that I have caused a copy of the foregoing Plaintiff's Response to Public Comments, as well as the attached copy of the public comment received from Geoffrey A. Mantooth on behalf of Serge A. Scherbatskoy, to be served on counsel for Defendants in this matter by facsimile and first class mail, postage prepaid, at the addresses set forth below:

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1/27/99

Date

"/s/"

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