UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *Plaintiff,* v. INGERSOLL-DRESSER PUMP COMPANY, INGERSOLL-RAND COMPANY, and FLOWSERVE CORPORATION, *Defendants.*	Civil Action No. 00 1818 TPJ Filed: December 7, 2000

MEMORANDUM IN SUPPORT OF MOTION OF THE UNITED STATES FOR ENTRY OF FINAL JUDGMENT

Pursuant to Section 2 (b)-(h) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16 (b)-(h), the United States moves for entry of the proposed Final Judgment in this civil antitrust proceeding. The Final Judgment may be entered at this time, without further hearing, if the Court determines that its entry is in the public interest. A Certificate of Compliance, certifying that the parties have complied with all applicable provisions of the APPA and that the waiting period has expired, is being filed simultaneously with this Memorandum.

I. Background

On July 28, 2000, the United States filed a civil antitrust suit alleging that an acquisition by Flowserve Corporation ("Flowserve") of Ingersoll-Dresser Pump Company ("IDP") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that Flowserve's proposed acquisition of IDP would reduce the already small number of firms that compete on bids to sell certain costly, specialized and highly engineered pumps used in oil refineries and electrical generating facilities in the United States. According to the Complaint, such a reduction in competition would

likely result in higher prices and reduced selection for those pumps. The prayer for relief in the Complaint seeks a judgment that the proposed acquisition would violate Section 7 of the Clayton Act, a permanent injunction that would prevent Flowserve from acquiring IDP, that the United States be awarded costs, and other relief that the Court deems just and proper.

With the Complaint, the United States also filed a proposed settlement that would permit Flowserve to complete its acquisition of IDP, yet preserve competition in the markets in which the transaction would otherwise raise significant competitive concerns. The settlement consists of a proposed Final Judgment and a Hold Separate Stipulation and Order. In essence, the Hold Separate Stipulation and Order would require Flowserve to maintain certain pump lines, and associated production assets, as economically viable, ongoing concerns, operated independently of Flowserve's other businesses until the divestitures mandated by the Final Judgment have been accomplished.

The proposed Final Judgment orders defendants to divest to one or more acquirers a perpetual, royalty-free, assignable, transferable license to manufacture and sell Flowserve's SCE, VLT, VMT, HQ, HX and WX pump lines, and IDP's J and CGT pump lines; Flowserve's pump plant in Tulsa, Oklahoma; the manufacturing equipment and tooling dedicated to the production of IDP's J and CGT pump lines; and the IDP service centers in Batavia, Illinois and La Mirada, California. Defendants must complete these divestitures within 150 days after filing of the Complaint, or five days after entry of the Final Judgment, whichever is later. If they do not complete the divestitures within the prescribed time, the Court will appoint a trustee to sell the assets.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions

of the proposed Final Judgment and to punish violations thereof.

II. Compliance with the APPA

The APPA requires a sixty-day period for the submission of public comments on the proposed Final Judgment. 15 U.S.C. § 16 (b). In this case, the sixty-day comment period commenced on September 13, 2000 and expired on November 13, 2000. During this period, the United States received no public comments on the proposed Final Judgment. As demonstrated by the Certificate of Compliance, filed by the United States simultaneously with this Memorandum, the procedures required by the APPA for entry of the proposed Final Judgment have been completed. 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 Final Judgment.

III. Standard of Judicial Review

As required by Section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (e), the Court is to evaluate whether the Judgment "is in the public interest" before entering the proposed Final Judgment. Consistent with Congress' intent to use consent decrees as an effective tool of antitrust enforcement, the Court's function is "not to determine whether the resulting array of rights and liabilities is the one that will best serve society, but only to confirm that 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) (internal quotations omitted); *see also United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981), *cert. denied*, 454 U.S. 1083 (1981).

In determining whether a proposed decree is in the public interest, the Court may consider:

> (1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other

considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment 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). The Court is to "examine the decree in light of the violations charged in the complaint," and should withhold approval of a proposed decree "only if any of the terms appear ambiguous, if the enforcement mechanism is inadequate, if third parties will be positively injured, or if the decree otherwise makes 'a mockery of judicial power.'" *Massachusetts School of Law at Andover, Inc. v. United States*, 118 F.3d 776, 783 (D.C. Cir. 1997) (quoting *Microsoft*, 56 F.3d at 1462).

None of these conditions are present here. Indeed, no one has contended that entry of the proposed Final Judgment would as a whole be contrary to the public interest. The proposed Final Judgment is closely related to the allegations of the Complaint, the terms are unambiguous, the enforcement mechanism adequate, and third parties will not be harmed by entry of this Judgment. The specific acquisition investigated -- Flowserve's purchase of Ingersoll-Dresser Pump Company -- is fully remedied in the proposed Final Judgment. If Flowserve is acting in other ways detrimental to competition, that is simply not in issue here and can be addressed by means still available to plaintiff and others. There has been no showing that the proposed settlement is inconsistent with the public interest.

IV. Conclusion

For the reasons set forth in this Memorandum, the proposed Final Judgment is in the public interest and may be entered without further hearings.

Respectfully submitted,

/s/

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