

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,

et al.

Defendants.

Civil Action No.:

94-0690

3/30/94

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of defendants International Association of Machinists and Aerospace Workers, Tom Ducey, William O'Driscoll, and William Winpisinger, in this civil antitrust proceeding.

I
NATURE AND PURPOSE OF THE PROCEEDING

On March 30, 1994, the United States filed a civil antitrust complaint alleging that the International Association of Machinists and Aerospace Workers ("IAM") and the three individual defendants, who serve as the IAM's representatives on the boards of Northwest Airlines Corporation ("Northwest") and Trans World Airlines, Inc. ("TWA"), had violated Section 8 of the Clayton Act, 15 U.S.C. § 19. Section 8 bars the same person from serving as an officer or director of two competing companies.^{1/}

The Complaint alleges that the IAM serves as a director of both Northwest and TWA through its representatives, the three individual defendants. Pursuant to agreements entered into with the two airlines in 1993, the international president of the IAM appointed Tom Ducey, former general secretary and

^{1/} Section 8 provides in relevant part: "No person shall, at the same time, serve as a director or officer in any two corporations...that are (A) engaged in whole or in part in commerce; and (B) by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the antitrust laws." 15 U.S.C. § 19(a)(1). The term "person" includes corporations and associations. 15 U.S.C. § 12.

treasurer of the IAM, to the Northwest board of directors and William O'Driscoll, the current president of IAM District 142, and William W. Winpisinger, the former president of the IAM, to the TWA board of directors. The Complaint seeks relief that will prevent the defendants from continuing to violate Section 8.

On March 30, 1994, the United States and the defendants filed a Stipulation in which they consented to the entry of the proposed Final Judgment that provides the relief the United States seeks in the Complaint. Under the proposed Final Judgment, the defendants will be prohibited from exchanging confidential information or from engaging in communications that could facilitate anticompetitive coordination between TWA and Northwest. The proposed Final Judgment would also prevent anticompetitive coordination between or among other airlines that in the future have IAM representatives on their boards of directors. The IAM will further be required to institute a compliance program to ensure that it does not renew the alleged violation. Additionally, the proposed Final Judgment requires that the IAM file annual reports with the Government certifying that it has complied with Section V(A) of the Final Judgment.

The United States and the defendants have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), provided that the United States has not withdrawn its consent. The proposed Final Judgment provides

that its entry does not constitute any evidence against or admission by any party with respect to any issue of fact or law.

Entry of the proposed Final Judgment will terminate the action against the defendants, except that the Court will retain jurisdiction over the matter for further proceedings that may be required to interpret, enforce, or modify the Final Judgment, or to punish violations of any of its provisions. The Final Judgment will terminate ninety days after no part of the IAM (the Grand Lodge or any District or Local Lodge) has the right to have a representative on the board of more than one airline.

II
DESCRIPTION OF THE PRACTICES
INVOLVED IN THE ALLEGED VIOLATIONS

Section 8 of the Clayton Act is a prophylactic provision designed to prevent restraints on competition that may arise from interlocking directorates or management. Interlocks can restrict competition both by facilitating coordination between competing companies and by providing a conduit for the exchange of competitively sensitive information. Congress intended Section 8 "to nip in the bud incipient violations of the antitrust laws by removing the opportunity or temptation to such violations through interlocking directorates." United States v. Sears, Roebuck & Co., 111 F. Supp. 614, 616 (S.D.N.Y. 1953). The "opportunity or temptation" for antitrust violations arises not only where the same natural person serves

as a director or officer of competing companies, but also where an entity such as a corporation or labor union serves as a director or officer of two companies through representatives or deputies.

In this case, the IAM serves as a director of Northwest and TWA, important actual and potential competitors in the air passenger transportation industry, competing for passengers on thousands of routes both within the United States and between the United States and international destinations. In 1993, the IAM entered into agreements with TWA pursuant to which the airline's employees agreed to wage reductions in exchange for an equity interest in the company and representation on TWA's board of directors. Pursuant to these agreements, the president of the IAM appointed William W. Winpisinger, former president of the IAM, and William O'Driscoll, chairman of District 142 of the IAM, to the TWA board of directors. In August 1993, the IAM entered into similar agreements with Northwest. The president of the IAM appointed Tom Ducy, former secretary/treasurer of the IAM to the Northwest board of directors.

As a result of the restructuring of Northwest and TWA, the same individual - the president of the IAM - has the power to appoint directors of two important competitors, raising the competitive concerns under Section 8. With representatives on the boards of both Northwest and TWA, the IAM could have the opportunity to facilitate exchanges of confidential information

or facilitate anticompetitive coordination between the two airlines. Because members of the IAM are employees and shareholders of both Northwest and TWA, they would potentially benefit from a reduction of competition between the two airlines, and thus the IAM may also have the incentive to engage in such anticompetitive conduct.

For example, the IAM representatives may be able to use their positions as directors to coordinate decisions by the two airlines on pricing or entry and exit of particular markets in such a way that competition between Northwest and TWA is reduced. The directors may also be in a position to exchange information on competitively sensitive subjects such as future pricing or marketing strategies. Such anticompetitive conduct, while potentially in the interest of the union members/shareholders at both airlines, would harm consumers. The proposed Final Judgment is designed to prevent such abuses from arising out of the IAM's representation on the boards of multiple airlines. In formulating the relief in the proposed Final Judgment, however, the Department has taken into account the limited antitrust immunity that applies to certain activities of labor unions. See Connell Construction Co. v. Plumbers & Steamfitters Local Union No. 100, 421 U.S. 616 (1975).

Moreover, in the near future the IAM may acquire the right to name representatives to the boards of additional airlines. The proposed Final Judgment will also apply to any future

interlocks, and will prevent any anticompetitive communications in those situations as well.

III
EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment is intended to insure that the IAM's representatives on airline boards of directors do not have the ability to use their position to restrain competition, either by engaging in coordination or by exchanging sensitive business information. The proposed Final Judgment creates a "fire wall" between the directors to prevent the types of anticompetitive conduct that is the target of Section 8.

A. Prohibited Conduct

Section IV of the proposed Final Judgment contains prohibitions that run against both the individual defendants and the IAM. Section IV(1) provides that the IAM shall require its present and any future board representatives to refrain from certain types of conduct. Section IV(2) requires the individual defendants to abide by the terms of the decree, including the prohibitions in Section IV(1). Section IV(3) contains injunctions against the IAM itself.

Sections IV(1)(A)-(C) are intended to prevent IAM directors from exchanging confidential competitively sensitive information that they learn about through their board position. Section IV(1)(A) prohibits IAM directors on the boards of different airlines from exchanging certain confidential information. Section IV(1)(B) prohibits an IAM

representative from disclosing confidential information of the airline of which he or she is a director to any person not employed by that airline. Section IV(1)(C) prohibits an IAM representative from voluntarily receiving confidential information from the IAM. An exception to IV(1)(C) is made for information relating to labor relations. "Information relating to labor relations" is specifically defined, and is limited to enumerated subjects closely related to labor relations, where communication of the information is required to fulfill the IAM's duty of fair representation of the employees it represents.

Section IV(1)(D) prohibits an IAM director from agreeing with or soliciting an agreement by an IAM director on the board of another airline that would reduce or eliminate competition between the two carriers in violation of the Sherman Act. The provision lists several types of agreements that would fall under this prohibition, including agreements to increase fares, eliminate discount fares, eliminate or reduce service, or refrain from establishing new service.

Sections IV(1)(E) and (F) enjoin the IAM directors from engaging in communications with IAM representatives on the board of another airline that have the purpose or effect of reducing competition between the two carriers. These provisions are designed to prevent the IAM representatives from using their positions to facilitate coordination between the airlines. The IAM representatives are specifically enjoined

from discussing competitively sensitive subjects, including current or future pricing and decisions on increasing or reducing capacity or frequency. The IAM directors may engage in communications about the subjects listed in IV(1)(F), however, if the communications are related to labor relations. For example, a communication about legitimate strike-related activities of the union, while relating to reductions in service, would not violate IV(1)(F)(ii).

The prohibitions of Section IV(3) run against the IAM. Section IV(3)(A) prohibits the IAM from appointing any person to the board of directors of any airline unless that person certifies in writing that he or she agrees to be bound by the terms of the proposed Final Judgment, including the prohibitions in Section IV(1)(A)-(F). Thus, future IAM board representatives will be prevented from using their position to facilitate coordination between airlines or the exchange of confidential information. In order to prevent the possibility that IAM officials with close day-to-day contacts will sit on the boards of competing carriers, Section IV(3)(B) prohibits the IAM from having active officers or employees of the same District or Local Lodge from serving concurrently on the boards of more than one airline.

Sections IV(3)(C)-(D) are designed to prevent the IAM from acting as a conduit for exchanges of confidential information that are proscribed by Section IV(1). Section IV(3)(C) prohibits the IAM from disclosing confidential information

received from an IAM representative on the board of any airline to any person not employed by that airline. Section IV(3)(D) prohibits the IAM from disclosing confidential information obtained from an IAM representative on the board of any airline to any IAM representative on the board of any other airline. These provisions have exceptions for information related to labor relations.

B. Compliance Program and Certification

In addition to the prohibitions contained in Section IV, the IAM is obligated under Section V to establish an antitrust compliance program. This program would require the IAM to designate an Antitrust Compliance Officer within 30 days of the entry of the Final Judgment. The Antitrust Compliance Officer would be responsible for distributing copies of the Final Judgment to designated individuals. All officers of the Grand Lodge of the IAM would be required to certify annually that they understand and agree to abide by the terms of the Final Judgment. In addition, the Antitrust Compliance Officer is responsible for obtaining written certification from any person appointed by the IAM as a director of an airline that he or she agrees to be bound by the terms of the Final Judgment. For four years after the entry of the Final Judgment the Antitrust Compliance Officer must file an annual certification with the Government as to the IAM's compliance with the provisions of Section V.

C. Effect of the Proposed Final Judgment on Competition

The relief in the proposed Final Judgment is designed to prohibit the IAM and its representatives on the boards of competing airlines from engaging in the type of anticompetitive conduct that Section 8 seeks to prevent. The proposed Final Judgment will prevent the IAM representatives from, directly or indirectly, facilitating coordination between airlines or from exchanging confidential information. The Department of Justice believes that the proposed Final Judgment contains sufficient provisions to prevent antitrust violations by the IAM and the representatives it has or will appoint to the boards of Northwest, TWA, or any other airline. At the same time, however, the proposed Final Judgment allows the IAM, through its board representatives, to protect the interests of its members.

IV
REMEDIES AVAILABLE TO
POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the Judgment has no prima facie

effect in any subsequent lawsuits that may be brought against any defendant in this matter.

V
PROCEDURES AVAILABLE FOR
MODIFICATION OF THE PROPOSED FINAL JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Roger W. Fones, Chief, Transportation, Energy & Agriculture Section, U.S. Department of Justice, Antitrust Division, 555 Fourth Street, N.W., Room 9104, Washington, D.C. 20001, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry.

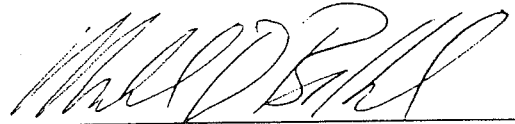
VI
ALTERNATIVE TO THE PROPOSED FINAL JUDGMENT

The alternative to the proposed Final Judgment would be a full trial of the case against the IAM and the individual defendants. In the view of the Department of Justice, such a trial would involve substantial cost to the United States, and is not warranted because the proposed Final Judgment provides relief that will remedy the violations of the Clayton Act alleged in the United States' Complaint.

VII
DETERMINATIVE MATERIALS AND DOCUMENTS

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), were used in formulating the proposed Final Judgment.

Respectfully submitted,



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Dated: March 30, 1994

CERTIFICATE OF SERVICE


I hereby certify that I have caused a copy of the foregoing Competitive Impact Statement to be served on counsel for defendants in this matter in the manner set forth below:

By first class mail, postage prepaid:

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