

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
MIDLAND-ODESSA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

BUSINESS INVESTMENT AND  
DEVELOPMENT CORPORATION,

Defendant.

Judge Lucius D. Bunton

Civil No. MO-81-CA-2

*Revised:*  
*4/20/82*

COMPETITIVE IMPACT STATEMENT

This competitive impact statement analyzes the proposed final judgment ("Judgment") submitted for entry in this civil antitrust proceeding and is filed by the United States pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. §§ 16(b)-(h) ("Act").

I. NATURE AND PURPOSE OF THE PROCEEDING

On February 27, 1981, the United States filed a civil antitrust complaint alleging that Business Investment and Development Corporation ("BIDCO") and other co-conspirators in the repossession industry had violated Section 1 of the Sherman Act, 15 U.S.C. § 1, by agreeing upon and publishing a fee schedule for repossession services, and by restricting the area in which its franchisees could advertise and provide repossession services.

BIDCO has a wholly owned subsidiary, American Lenders Service Company ("ALSCO"), which operates a national repossession service organization. At the time the complaint was filed, thirty BIDCO stockholders who held approximately 90% of total equity outstanding, including all BIDCO officers and directors, owned or operated repossession agencies.

The complaint asks the Court to enjoin and restrain the defendant from engaging in the allegedly illegal activities and other activities with a similar purpose or effect.

Entry of this Judgment by the Court will terminate the litigation, except that the Court will retain jurisdiction over the matter for possible future proceedings to interpret, modify or enforce provisions of the Judgment.

## II. NATURE OF THE ALLEGED VIOLATIONS

Repossessors, or adjusters as they are sometimes called, provide services for banks, credit unions, and other lending institutions that seek to recover merchandise sold under a security agreement. Repossessors act as agents for lenders and furnish a variety of services to them, including tracing of property, collection and adjustment of loans, as well as repossession and sale or return of collateral. BIDCO, through its subsidiary, ALSCO, is a franchisor of offices which provide repossession services under the ALSCO trademark. These franchisees presently operate in about 25 states under franchise agreements. Some of these franchisees are actual or potential competitors of one another.

Several of the nationwide reposessor organizations each publish directories, listing the names of their members and the geographic areas they serve, and distribute them to banks, credit unions, and other lenders across the country. ALSCO intends to publish such a directory. Potential clients refer to these publications to find repossessors in areas outside the client's local area because collateral is often no longer in the vicinity of the lender. This "out of area" business comprises a significant portion of the services performed by members of reposessor organizations.

During the period covered by this complaint, ALSCO sold franchises granting exclusive rights to operate offices in various geographical areas. Many of the ALSCO franchisees also held exclusive rights from other nationwide repossession organizations to maintain offices in the same geographical territories. Thus, although several national organizations of repossessors exist, the actual number of competitors in many markets was limited because of overlapping exclusive territories.

The complaint alleges that the defendant and co-conspirators agreed to eliminate price and other forms of competition in the trade and commerce of providing repossession services. The complaint alleges that the defendant and co-conspirators have (a) agreed to, prepared, and published a list of fees for repossession services; (b) agreed to observe the list of fees for repossession services; (c) restricted the area for which each ALSCO franchisee can advertise and provide repossession services; (d) restricted the number of persons who can obtain an ALSCO franchise for any given area; and (e) required that each franchisee not engage in any competitive enterprise not approved by ALSCO.

### III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and the defendant have stipulated that the Court may enter the Judgment at any time after compliance with the Act. The 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. Under Section 2(a) of the Act, the Judgment may not be entered until the Court finds that entry is in the public interest.

The Judgment contains two principal forms of relief. First, the defendant is enjoined from engaging in behavior that constituted the alleged conspiracy. Second, the



Judgment places affirmative burdens on the defendant to prevent recurrence of the alleged conspiracy.

A. Prohibited Behavior

Under Section IV of the Judgment, the defendant is restrained from: (1) entering into any agreement with any repossession organization to fix prices for repossession services; (2) fixing or publishing any price schedule or list of fees for repossession services; (3) recommending any price schedule or list of fees for repossession services; and (4) participating in any communication with any other repossession or with any representative of other repossession organizations that relates to any price schedule or list for repossession services. The defendant is, however, allowed to set and distribute suggested prices for services of ALSCO offices in which ALSCO owns a majority interest. The defendant is also allowed to negotiate fees to be charged for specific accounts referred to or accepted by its company-controlled offices. The defendant may require its franchisees to guarantee customer satisfaction regarding prices, terms or conditions of providing repossession services. The purpose of this provision is to permit ALSCO to respond to complaints by its customers about price gouging by its franchisees.

Under Section VI, the defendant is enjoined from restricting the area in which or the customers for which its franchisees provide services and from restricting the geographic area for which its franchisees may advertise. The Judgment, however, does not prohibit ALSCO from placing a reasonable limit on the total number of listings for each franchisee in any ALSCO directory.

Section VII provides that the Judgment does not prohibit ALSCO from restricting the area in which its franchisees may operate offices if such restricted areas do not, in whole or in part, overlap areas in which exclusive rights were granted

to the same person by another reposessor organization. Each person who, as of February 6, 1982, held such overlapping areas of exclusive rights has a period of three years to either waive exclusive rights in all other organizations or have his ALSCO franchise terminated.

B. Defendant's Affirmative Obligations

Under Section V, when an ALSCO directory is published, a statement of compliance with the Judgment's price provisions, i.e., cessation of the publication of suggested price lists, must be included in a prominent manner in the prefatory section of each directory. Until an ALSCO directory is published, ALSCO must publish the statement of compliance in its newsletter every six months for two years and thereafter once a year.

Under Section VIII, the defendant is required to eliminate from its bylaws, franchise agreements, manuals and other governing documents any provisions inconsistent with the Judgment.

Section IX and X require the defendant to establish an antitrust compliance program which includes annual reporting to the Department of Justice and dissemination of the Judgment to each of the defendant's officers, directors, employees, and franchisees.

Under Section XI, jurisdiction is retained by the Court for purposes of enabling either of the parties to apply to the Court at any time for such further orders necessary or appropriate for construction, modification, or enforcement of the Judgment.

C. Scope of the Proposed Judgment

The Judgment will remain in effect for ten years from its date of entry and applies to the defendant and to its officers, directors, franchisees, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with the defendant who have received actual notice of the Judgment.

D. Effect of the Proposed Judgment on Competition

Section IV of the Judgment is designed to encourage competition in the repossession business by ensuring that the defendant's franchisees act independently in determining prices or fees to be charged for repossession services. Section VI restricts the defendant from limiting the geographic territory in which any ALSCO franchisee operates or for which any ALSCO franchisee advertises that it operates. Section VII allows the defendant to restrict the area in which its franchisees operate offices so long as those restrictions do not result in a franchisee having an overlapping exclusive territory. Section VII also provides that three years after entry of the Judgment, the defendant's franchisees who have exclusive rights in all or any portion of the same territory from ALSCO and another reposessor organization either terminate the ALSCO franchise or waive the exclusive rights granted by the other repossession organization.

Thus, the Judgment is intended to increase competition in the repossession business in two ways. It eliminates certain restraints on competition among franchisees of ALSCO that may



have served to inhibit competition with other reposessor groups. All or most such groups had similar price schedules and there were many geographic areas served by reposseors with two or more exclusives from different organizations. The decree enjoins the use of price schedules and requires ALSCO franchisees to elect between exclusive rights to a territory from ALSCO or from another reposessor organization. On the other hand, the Judgment allows ALSCO to grant to its franchisees exclusive areas in which to maintain an ALSCO office as long as the franchisees do not have exclusive rights from another reposessor organization for the same territory. Such exclusives can be used by ALSCO to encourage its franchisees to offer more or better service in order to compete more effectively with members of other reposessor organizations.

Compliance with the Judgment should prevent collusion among the defendant, its franchisees and competitors in determining prices or fees to be charged for repossession services and in unreasonably restricting the geographic territories in which ALSCO franchisees operate or for which they advertise their services. The prohibition against ALSCO franchisees' holding exclusive rights for the same territory from more than one reposessor organization should promote competition between ALSCO franchisees and members of other reposessor organizations.

#### 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 Judgment will neither impair nor assist the bringing of such actions. The Judgment has no prima facie effect in any lawsuit that may be brought against the defendant because no matters are estopped as between the defendant and private parties under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a).

V. PROCEDURES AVAILABLE FOR MODIFICATION  
OF THE PROPOSED CONSENT JUDGMENT

As provided by the Act, any person wishing to comment upon the Judgment may, within the statutory 60-day comment period, submit written comments to John W. Poole, Jr., Chief, Special Litigation Section, Antitrust Division, United States Department of Justice, Washington, D. C. 20530. 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, which remains free to withdraw its consent to the Judgment at any time prior to entry. The Judgment provides that the Court retains jurisdiction over this action and either of the named parties may apply to the Court for any order necessary or appropriate for its modification, interpretation, or enforcement.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The Department considered two alternatives to the Judgment. First, it considered an injunction requiring the defendant to accept as an ALSCO franchisee any reposessor meeting reasonable and objective criteria. Under this alternative, ALSCO franchises would no longer be able to have exclusive rights to operate an office in a given territory. The Department rejected this alternative in favor of a provision which is expected to increase competition among reposessor organizations, in large part



by eliminating the overlapping territories that reduced significantly the number of competitors in many geographic markets. In addition, as noted above, ALSCO can utilize the limited exclusives it may grant under the Judgment to improve and promote its service, thus differentiating its brand from other reposessor organizations and increasing interbrand competition.

The second alternative to the Judgment considered by the Department was a full trial on the merits. The Department considers the Judgment to be of sufficient scope and effectiveness to make a trial unnecessary.

VII. DETERMINATIVE MATERIALS AND DOCUMENTS

The Department did not consider any materials or documents of the type described in Section 2(b) of the Act in formulating the Judgment.

Dated:

Respectfully submitted,

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