

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	Civil No. 81-003-Orl-CIV-Y
TIME FINANCE ADJUSTERS,)	
)	
Defendant.)	Filed: July 14, 1981
)	

COMPETITIVE IMPACT STATEMENT

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

I

NATURE AND PURPOSE OF THE PROCEEDING

On January 6, 1981, the United States filed a civil antitrust Complaint alleging that Time Finance Adjusters, ("TFA"), a national association of repossessionors located in Daytona Beach, Florida, and its co-conspirators had conspired to fix prices, restrict territories and limit membership in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

The Complaint alleges that, beginning at least as early as 1975, and continuing to the date of the filing of the Complaint in the action, defendant and various co-conspirators engaged in a nationwide combination and conspiracy to agree on, prepare, publish in defendant's directory, disseminate and encourage members to adhere to, fee schedules for repossession services; to restrict membership to one or few members in certain geographic areas; to restrict the

area in which each of defendant's members could advertise its repossession services; and to establish arbitrary and unreasonable membership restrictions.

The Complaint asks the Court to enjoin and restrain the defendant from such activities in the future.

Entry by the Court of this Judgment will terminate this litigation. The Court will retain jurisdiction for possible future proceedings that might be required to interpret, modify or enforce its provisions.

II

NATURE OF THE ALLEGED VIOLATION

Repossessors, or adjusters as they are sometimes called, provide services for banks, credit unions and other lenders that seek to recover merchandise sold under a security agreement. During the period covered by the Complaint, defendant had member-repossessors located throughout the United States.

The Complaint alleges that 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 further that they: (a) agreed to, prepared, published in the TFA directory, disseminated and encouraged members to adhere to fee schedules for repossession services; (b) restricted membership in TFA to one or few members in certain geographic areas; (c) restricted the area for which each TFA member could advertise its services; and (d) established arbitrary and unreasonable membership restrictions.

III

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and defendant have stipulated that this Judgment may be entered by the Court at any time after compliance with the Act. The Judgment states that it constitutes no admission by any party of any issue of fact or law.

Under the provisions of the Act, entry of the Judgment is conditioned upon a determination by the Court that it is in the public interest.

The Judgment contains two principal forms of relief. First, defendant is enjoined from engaging in the behavior that constituted the conspiracy alleged in the Complaint. Second, the Judgment places affirmative burdens on defendant directed toward preventing recurrence of such behavior.

A. PROHIBITED CONDUCT

Under Section IV defendant is restrained from (1) fixing any price schedule or list for repossession services; (2) advertising any price schedule or list for repossession services; (3) publishing any price schedule or list for repossession services; (4) participating in any communications with representatives of other repossession associations that relate to any price schedule or list for repossession services; or (5) engaging in any conduct the effect of which is to influence the formulation of any price schedule or list for repossession services.

Under Section VI defendant is prohibited, with two exceptions, from publishing any other reference to prices or fees for repossession services in its directory or other publications.

Under Section VII defendant is enjoined from expelling any TFA member or from denying or delaying any TFA membership application on the basis of (1) the population or other demographic information of a member's or an applicant's service area, or (2) the number of other TFA members or applicants who operate or may operate in that service area.

Under Section IX defendant is enjoined from any activity whose purpose or foreseeable effect is to allocate, protect, limit or otherwise influence the service area or territory in which any of its members operate or advertise that they operate.

Under Section XII defendant is enjoined from establishing or maintaining unreasonable fees for TFA membership.

B. DEFENDANT'S AFFIRMATIVE OBLIGATIONS

Under Section V defendant is required to publish in a prominent manner in the prefatory section of each TFA membership directory or other similar publication, a statement of compliance with the prices or fees provisions of the Judgment.

Under Section VIII defendant is required to eliminate any restrictions on TFA members concerning the manner or extent of advertising their service area in any publication.

Under Section X defendant is required to eliminate certain existing TFA membership requirements.

Under Section XI defendant is ordered to admit to membership any applicant who meets the following requirements: (1) ability to obtain and retain, in the commercial market, reasonable fidelity bonds; (2) licensure under all applicable state and local licensing laws; (3) certification that he or she has not been convicted of a felony within a

period of up to ten years prior to his or her application for membership; (4) one year of experience as an active reposessor; and (5) a principal office location specifically for his or her repossession business during TFA membership.

Under Section XIII defendant is ordered to publish in the prefatory section of each TFA membership directory or other similar publication, certain information regarding the membership application process.

Sections XIV and XV require defendant to establish an antitrust compliance program which must include annual reporting to the Department of Justice and dissemination of this Judgment to each of its officers, directors, employees and members.

Under Section XVI jurisdiction is retained by the Court for purposes of enabling either of the parties to this Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for construction or implementation of this Judgment, for modification of any of the provisions, for enforcement or compliance, and for punishment of violations. Further, Section XVII provides that the Judgment shall remain in effect until ten (10) years from date of entry.

C. SCOPE OF THE PROPOSED JUDGMENT

The Judgment applies to defendant and to its officers, directors, members, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with defendant who have received actual notice of this Judgment by personal service or otherwise.

D. EFFECT OF THE PROPOSED JUDGMENT ON COMPETITION

The terms of Sections IV and VI of the Judgment are designed to ensure that defendant's members will act independently in determining the prices or fees to charge

for repossession services. Accordingly, the affirmative obligations of Sections V and XIV are directed toward informing defendant's clients, members, employees and others of this Judgment and of their obligations under the decree not to engage in the type of behavior alleged in the Complaint.

The terms of Sections VII and IX of the Judgment are designed to ensure that defendant will not restrict TFA memberships and geographic territories in which any of its members operate or advertise that they operate. Accordingly, the affirmative obligations of Sections VIII, X, XI, XIII and XIV are directed toward the establishment of fair, reasonable and objective criteria for admission to membership in any geographic area and for advertising by members.

Compliance with the Judgment should prevent collusion among defendant, its members and competitors in determining prices or fees to charge for repossession services and in unreasonably restricting TFA memberships and geographic territories in which TFA members operate or advertise that they operate.

IV

REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

After entry of the Judgment, any potential private plaintiff that might have been damaged by any alleged violation will retain the same right to sue for monetary damages and any other legal or equitable relief that it may have had if the Judgment had not been entered. The Judgment may not be used, however, as prima facie evidence in private antitrust litigation.

V

PROCEDURES AVAILABLE FOR MODIFICATION
OF THE PROPOSED CONSENT JUDGMENT

The Judgment is subject to a stipulation between the Government and defendant which provides that the Government may withdraw its consent to the Judgment any time before entry of the Judgment. By its terms, the Judgment provides for the Court's retention of jurisdiction of this action to permit any of the parties to apply to the Court for such orders as may be necessary for its modification.

As provided by the Act, any person wishing to comment upon the Judgment may, for the statutory sixty-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. Any comments and the Government's response to them will be filed with the Court and published in the Federal Register. The Government will evaluate all such comments to determine whether there is any reason for withdrawal of its consent to the Judgment.

VI

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The alternative to the Judgment considered by the Antitrust Division was a full trial on the merits and on relief. The Division considers the Judgment to be of sufficient scope and effectiveness to make a trial unnecessary because it provides for all the relief prayed for in the Complaint.

VII

DETERMINATIVE MATERIALS AND DOCUMENTS

No materials or documents were considered determinative by the United States in formulating the Judgment. Consequently, none are being filed pursuant to the Act.

Dated:

Respectfully submitted,


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