

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION

UNITED STATES OF AMERICA

v.

ASHLAND-WARREN, INC.,

Defendant.

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Civil Action No.: 82-338-CIV-5

Filed: April 8, 1982

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 files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

NATURE AND PURPOSE  
OF THE PROCEEDING

On April 8, 1982, the United States filed a civil anti-trust complaint under Section 4 of the Sherman Act (15 U.S.C. § 4) to enjoin the defendant from continuing or renewing violations of Section 1 of the Sherman Act (15 U.S.C. § 1).

Count One of the complaint alleges that beginning in at least 1975, and continuing until at least August 1979, the defendant and unnamed co-conspirators engaged in a combination and conspiracy to restrain interstate commerce by allocating among themselves highway construction projects let by the State of North Carolina in the western part of the state. Count Two of the complaint alleges that beginning in or about April 1979, and continuing after that time, the defendant and unnamed co-conspirators engaged in a conspiracy to restrain interstate commerce by submitting collusive, noncompetitive and rigged bids on highway construction Project 5.2811036,

let by the State of North Carolina on May 1, 1979. Count Three of the complaint alleges that beginning in or about September 1978, and continuing after that time, the defendant and unnamed co-conspirators engaged in a conspiracy to restrain interstate commerce by submitting collusive, noncompetitive and rigged bids on highway construction Project 9.5070102, let by the State of North Carolina on October 3, 1978 and relet on November 28, 1978. Count Four of the complaint alleges that beginning in at least 1974, and continuing until at least October 1979, the defendant and unnamed co-conspirators engaged in a combination and conspiracy to restrain interstate commerce by allocating among themselves highway construction projects let by the State of North Carolina in certain named counties in the state.

The complaint seeks a judgment by the court that the defendant engaged in the combinations and conspiracies in restraint of trade in violation of Section 1 of the Sherman Act as alleged in Counts One, Two, Three and Four of the complaint. The complaint also seeks an order to enjoin the defendant from continuing or resuming any conspiracy or other combination having similar purposes or effects.

This proceeding arose as a result of grand jury investigations into bid-rigging activities of the defendant and others in North Carolina and other states. Ashland-Warren, Inc. was charged in three indictments in the Eastern District of North Carolina for violations of the Sherman Act (15 U.S.C. § 1) and the mail fraud statute (18 U.S.C. § 1341). United States v. Ashland-Warren, Inc., Criminal Nos. 82-10-CR-5, 82-11-CR-5 and 82-12-CR-5. The company also was charged in four indictments in the Middle District of Tennessee for violations of the

Sherman Act (15 U.S.C. § 1) and the mail fraud statute (18 U.S.C. § 1341). United States v. Ashland-Warren, Inc., Cr. No. 81-30033; United States v. Ashland-Warren, Inc., et al., Cr. No. 81-30037; United States v. Ashland-Warren, Inc., Cr. No. 81-30042; and United States v. Ashland-Warren, Inc., et al., Cr. No. 81-30043. In addition, Ashland-Warren's parent, Ashland Oil, Inc. was charged in an indictment in the Middle District of Tennessee. United States v. Ashland Oil, Inc., Cr. No. 81-30038. Ashland-Warren, Inc. also was charged in one indictment and two informations in the Eastern District of Virginia for violations of the Sherman Act (15 U.S.C. § 1). United States v. Ashland-Warren, Inc., et al., Cr. No. 80-00022-R; United States v. Ashland-Warren, Inc., Cr. Nos. 80-00071-R and 80-00072-R. Pursuant to plea agreements, the defendant pleaded guilty to a total of four counts in the three indictments filed in the Eastern District of North Carolina and was fined \$4,000,000. The four counts to which the defendant pleaded guilty are the four violations which are the subject of the complaint. The defendant also pleaded guilty to two counts in two of the indictments filed in the Middle District of Tennessee (Cr. Nos. 81-30033 and 81-30042). The defendant was fined \$2,000,000. The remaining counts and indictments were then dismissed. Finally, the defendant pleaded guilty to a total of three counts in the three indictments filed in the Eastern District of Virginia and was fined \$1,500,000.

## II

### THE TERMS OF THE ALLEGED CONSPIRACIES

During the period of time covered by the complaint, the defendant engaged in the business of highway construction in the State of North Carolina, as well as other states.

The complaint alleges that in each of the four counts, the defendant and unnamed co-conspirators conspired to restrain interstate commerce in violation of Section 1 of the Sherman Act, by submitting collusive, noncompetitive and rigged bids on highway projects that were part of the Federal-Aid highway system in the State of North Carolina. To effectuate the conspiracies, the complaint alleges that the defendant and unnamed co-conspirators discussed the submission of prospective bids, agreed the defendant or a conspiring company would be the low bidder on the projects, and submitted intentionally high or complementary bids, or withheld bids on the projects. The complaint further alleges that the conspiracies had the effect of establishing the price of highway construction projects subject to the conspiracies at artificial and noncompetitive levels and of denying the State of North Carolina and the United States the benefits of free and open competition.

### III

#### EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The parties have stipulated that the proposed Final Judgment may be entered by the court at any time after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h). The proposed Final Judgment between the parties provides that the entry of the Final Judgment is not an admission by any party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, the proposed Final Judgment may not be entered unless the court determines that entry is in the public interest.

The proposed Final Judgment enjoins the defendant from entering into, adhering to, maintaining, enforcing or furthering,

directly or indirectly, any contract, agreement, understanding, plan, program, combination or conspiracy with any person to:

a. raise, fix, establish, maintain or adhere to prices, discounts or any other term or condition of sale for paving or construction work or the sale of any form of construction material;

b. submit noncompetitive, collusive or rigged bids or refrain from bidding on any contract for the sale of construction material or paving or construction work to any third person;

c. allocate or divide markets, customers, territories or contracts for the sale of any form of construction material or paving or construction work to any third person.

The proposed Final Judgment also enjoins the defendant from communicating with or requesting from any other person engaged in paving or construction work or the sale of construction material information concerning:

a. any past, present, future or proposed bid, or the consideration of whether to make any bid, for the sale of construction material or the performance of paving or construction work to any third person;

b. any past, present, future or proposed price, discount or other term or condition of sale for construction material or paving or construction work or the consideration of whether to make any change in any actual or proposed price, discount or other term or condition of sale for construction material or paving or construction work; or

c. sales or costs of construction material or paving or construction work, production, or costs.

These restrictions on communication do not apply to:

a. any necessary communication in connection with formulating or submitting with any person a bona fide joint bid or quotation that has been requested by or is known to the purchaser;

b. any necessary communication relating to a bona fide contemplated or actual purchase or sales transaction between the parties to the communication; and

c. any communication that is made to the public or trade generally, but not made directly to any other person engaged in the sale of construction material or paving or construction work.

The proposed Final Judgment requires the defendant to provide a copy of the Final Judgment to each of its employees whose ordinary and regular duties include bidding or estimating paving or construction work or contracts or recommending or establishing the price of any construction material within 60 days after the judgment is entered. The defendant must also furnish a copy of the Final Judgment to each person who becomes an employee with the responsibilities described above within 60 days after the employee assumes the described position. In addition, the defendant is required to distribute at least once every two years, a copy of the Final Judgment and a written directive about the defendant's compliance policy to each of the described employees. The directive must include a warning that noncompliance will result in disciplinary action, which may include dismissal, and advice that the defendant's legal advisors are available to confer on compliance questions. Upon receipt of the judgment and directive, the employee must submit a signed statement to his or her employer acknowledging that

a signed statement to his or her employer acknowledging that the employee has read the judgment and directive, has been advised and understands that noncompliance with the judgment may result in disciplinary action, which may include dismissal, and has been advised and understands that noncompliance may also result in conviction for contempt of court and fine or imprisonment or both.

The proposed Final Judgment also provides that the defendant require, as a condition of the sale or other disposition of all, or substantially all, of the total assets of any division or subsidiary engaged in the paving or construction business or the sale of construction material, that the acquiring party agree to be bound by the provisions of the Final Judgment. The acquiring party must file with the court, and serve on the United States, its consent to be bound by the judgment.

The Department of Justice is given access under the proposed Final Judgment to the files and records of the defendant, subject to reasonable notice requirements, in order to examine such records to determine or secure compliance with the Final Judgment. The Department is also granted access to interview officers, directors, agents or employees of the defendant to determine whether the defendant and its representatives are complying with the Final Judgment. Finally, the defendant, upon the written request of the Department of Justice, shall submit reports in writing, under oath if requested, with respect to any of the matters contained in the Final Judgment.

#### IV

#### REMEDIES AVAILABLE TO 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 such person has suffered, as well as costs and reasonable attorney's fees. The entry of the proposed Final Judgment will neither impair nor assist any person bringing or prosecuting any treble damage antitrust claim arising out of the combinations and conspiracies charged in the complaint. Under Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), this Final Judgment may not be used as prima facie evidence in legal proceedings against the defendant.

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 Anthony V. Nanni, Chief, Trial Section, Department of Justice, Antitrust Division, 10th and Constitution Avenue, N.W., Washington, D.C. 20530, 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 before its entry if it should determine that some modification is appropriate and necessary to the public interest. The proposed Final Judgment provides that the court retains jurisdiction over this action, and the parties may apply to the court for such orders as may be necessary or appropriate for its modification or enforcement.



VI

ALTERNATIVES TO THE  
PROPOSED FINAL JUDGMENT

The proposed Final Judgment will dispose of the United States' claim for injunctive relief against the defendant. The only alternative available to the Department of Justice is a trial of this case on the merits. Such a trial would require a substantial expenditure of public funds and judicial time. Since the relief obtained in the proposed Final Judgment is substantially similar to the relief the Department of Justice would expect to obtain after winning a trial on the merits, the United States believes that entry of the proposed Final Judgment is in the public interest.

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 considered in formulating the proposed Final Judgment.

Respectfully submitted,

  
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Dated: