

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

UNITED STATES OF AMERICA,)
)
 Plaintiff,) Civil No. C78-0064 L (B)
)
 v.) *filed: 15 MAR 1979*
)
 UNITED PIPELINE CONSTRUCTION)
 CO.;)
 HALL CONTRACTING CORPORATION;)
 and)
 BUTLER PIPELINES, INC.,)
)
 Defendants.)

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2 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 March 3, 1978, the United States filed a civil antitrust Complaint alleging that three corporations combined and conspired to submit noncompetitive bids in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

The Complaint alleges that beginning at least as early as 1971 and continuing thereafter at least into 1974, the defendants engaged in a combination and conspiracy: (a) to exchange information concerning bid amounts or bid ranges with respect to water pipeline contracting jobs; (b) to allocate water pipeline contracting jobs; (c) to request or submit noncompetitive, collusive, complementary bids on water pipeline contracting jobs; and (d) to refrain from bidding on water pipeline contracting jobs.

The Complaint seeks a judgment by the Court declaring that defendants engaged in an unlawful combination and conspiracy in restraint of trade in violation of the Sherman Act. It also seeks an Order by the Court to enjoin and restrain the defendants from such activities in the future and, for a period of five years following the date of entry of such Order, to require each of the defendants to affix to every bid and quotation for water pipeline contracting services a written certification that such bid or quotation was not the result of any agreement, understanding, or communication between the defendant and any other water pipeline contracting company.

The corporations named in the Complaint are: United Pipeline Construction Co.; Hall Contracting Corporation; and Butler Pipelines, Inc.

All of these defendants to this action have previously pleaded nolo contendere to criminal misdemeanor charges with respect to this alleged conspiracy. A fine of \$25,000 was levied against United Pipeline Construction Co.; a fine of \$25,000 was levied against Hall Contracting Corporation; and a fine of \$30,000 (\$18,000 of which was suspended) was levied against Butler Pipelines, Inc. This civil action had been held in abeyance until the criminal misdemeanor charge was resolved.

II

DESCRIPTION OF THE PRACTICES GIVING RISE TO THE ALLEGED VIOLATIONS OF THE ANTITRUST LAWS

For the purpose of this case, the Complaint defines "water pipeline contracting services" as the business of installing, removing, altering, or repairing, or the rendering of other services regarding, water pipeline and of selling associated water pipe and appurtenances. The

furnishing of water pipeline contracting services is a specialized field engaged in by a limited number of entities equipped by technical training and experience to perform these services.

Water pipeline contracting services are purchased by customers either through negotiations with, or through solicitation of bids from, water pipeline contractors. The customers for water pipeline contracting services are water utilities and governmental, commercial, and private customers.

During the period covered by the Complaint, the defendants were among the leading water pipeline contractors in the Louisville service area, the territory served by the Louisville Water Company. In 1974, the defendants had total revenues of approximately \$6.1 million from the sale of water pipeline contracting services.

The Complaint alleges that the defendants engaged in a combination and conspiracy beginning at least as early as 1971 and continuing thereafter at least into 1974 that consisted of a continuing agreement, understanding, and concert of action among themselves and co-conspirators, the substantial terms of which were:

- (A) to exchange information concerning bid amounts or bid ranges with respect to water pipeline contracting jobs;
- (B) to allocate water pipeline contracting jobs;
- (C) to request or submit noncompetitive, collusive, complementary bids on water pipeline contracting jobs; and
- (D) to refrain from bidding on water pipeline contracting jobs.

The Complaint further alleges that the combination and conspiracy had the following effects, among others:

- (A) price competition in the sale of water pipeline contracting services in the Louisville service area has been restrained; and
- (B) customers in the Louisville service area have been deprived of the benefits of full, free, and open competition in the purchase of water pipeline contracting services.

III

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and the defendants 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. The proposed Final Judgment states that it constitutes no admission by any party with respect to any issue of fact or law. Under the provisions of the Antitrust Procedures and Penalties Act, entry of the proposed Judgment is conditioned upon a determination by the Court that the proposed Judgment is in the public interest. (See Section XI of the proposed Final Judgment.)

The proposed Final Judgment enjoins any direct or indirect renewal of the type of conspiracy alleged in the Complaint. Specifically, Section IV provides that the defendants are enjoined and restrained from entering into, adhering to, participating in, maintaining, furthering, enforcing or claiming, either directly or indirectly, any rights under any contract, agreement, understanding, arrangement, plan, program, combination, or conspiracy with any other water pipeline contractor to:

- (A) exchange information concerning bid amounts or bid ranges with respect to water pipeline contracting jobs;
- (B) allocate water pipeline contracting jobs;
- (C) request or submit noncompetitive, collusive, complementary bids on water pipeline contracting jobs; and
- (D) refrain from bidding on water pipeline contracting jobs.

Section V further enjoins each defendant from furnishing to or exchanging with any other defendant or any other water pipeline contractor any information concerning the prices, terms or other conditions of sale or lease which any water pipeline contractor has submitted, intends to submit, or is considering submitting to any prospective customer, prior to the release of such information to the public or to the trade generally. The injunctions in Sections IV and V run perpetually.

Section VII of the proposed Final Judgment orders and directs each defendant, for a period of five years from the date of entry of the Judgment, to affix to every bid or quotation for the rendering of water pipeline contracting services a written certification, signed by an officer of such defendant responsible for the preparation of bids or quotations, that such bid or quotation was not in any way the result, directly or indirectly, of any discussion, communication, agreement, understanding, plan, or program, whether formal or informal, between such defendant and any other water pipeline contractor.

Section VIII of the proposed Final Judgment orders and directs each defendant to:

- (A) furnish a copy of the Judgment to each of its officers, directors, superintendents, and other persons responsible for bid preparation or submission within thirty days after the date of entry of the Judgment;
- (B) furnish a copy of the Judgment to each successor to those persons described in subparagraph (A), above, within thirty days after each such successor is employed;
- (C) obtain from each such person furnished a copy of the Judgment pursuant to subparagraphs (A) and (B), above, a signed receipt which shall be retained in the defendant's files;
- (D) attach to each copy of the Judgment furnished pursuant to subparagraphs (A) and (B), above, a statement advising each person of his obligations and of defendant's obligations under the Judgment, and of the criminal penalties which may be imposed upon him and/or upon the defendant for violation of the Judgment;
- (E) hold, within forty days after the date of entry of the Judgment, a meeting of the persons described in subparagraph (A); and at this meeting these persons shall be instructed concerning the defendant's and their obligations under the Judgment. Similar meetings shall be held at least once a year for a period of five years from the date of entry of the Judgment; and these meetings shall also be attended by the persons described in subparagraph (B), above;

- (F) establish and implement a plan for monitoring compliance by the persons described in subparagraph (A) of this Section with the terms of the Judgment; and
- (G) file with the Court and serve upon the United States within sixty days after the date of entry of the Judgment, an affidavit as to the fact and manner of its compliance with subparagraphs (A), (C), and (D), above.

There are several limited exceptions to the prohibitions against exchange of information set forth in Sections IV and V of the proposed Final Judgment. These exceptions, found in Section VI of the Judgment, relate to possible purchase, sale, lease, or rental of water pipeline contracting supplies or water pipeline contracting equipment between a defendant and any other water pipeline contractor, or possible joint venture or sub-contract agreements, provided that the transaction is denominated as a joint venture or sub-contract agreement in the bid submitted to the prospective customer.

The proposed Final Judgment is applicable to each of the defendants and to the subsidiaries, successors, assigns, officers, directors, agents, servants and employees of each defendant, and to all persons in active concert or participation with any of them who shall have received actual notice of the Judgment by personal service or otherwise. (See Section III of the proposed Final Judgment.)

Standard provisions similar to those found in other antitrust consent judgments are contained in Section I, concerning jurisdiction of the Court, Section IX, concerning investigation and reporting requirements, and Section X, concerning retention of jurisdiction by the Court over the parties to this Final Judgment.

IV

REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

After entry of the proposed Final Judgment, any potential private plaintiff who might have been damaged by the alleged violations will retain the same right to sue for monetary damages and any other legal and equitable remedies which he may have had if the Judgment had not been entered. The Judgment may not be used, however, as prima facie evidence in private litigation, pursuant to Section 5(a) of the Clayton Act, as amended, 15 U.S.C. § 16(a).

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 John A. Weedon, Chief, Cleveland Field Office, Antitrust Division, United States Department of Justice, 995 Celebrezze Federal Building, Cleveland, Ohio 44199 (telephone: 216-522-4070), within the 60-day period provided by the Act. These comments and the Department's responses to them 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 Judgment at any time prior to its entry if it should determine that some modification of it is necessary. Section X of the proposed Final Judgment provides that the Court retains jurisdiction over this action and that the parties may apply to the Court for such orders as may be necessary or appropriate for its modification, interpretation, or enforcement.

VI

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The alternative to the proposed Final Judgment considered by the Antitrust Division was a full trial of the issues on the merits and on relief. The Division considers the substantive language of the proposed Final Judgment to be of sufficient scope and effectiveness to make litigation on the issues unnecessary, as the proposed Final Judgment provides appropriate relief against the violations charged in the Complaint.

In reaching an agreement on the proposed Judgment, one matter was the subject of negotiation: whether there would be any exceptions to the provisions in Sections IV and V prohibiting the exchange of information. Initially, the United States proposed a Judgment that did not include the exceptions contained in Section VI, relating to possible joint venture or sub-contract agreements and to possible purchase, sale, lease, or rental of water pipeline contracting supplies or equipment between a defendant and any other water pipeline contractor. The United States decided to allow these exceptions because in many situations, especially those involving large projects or specialized tasks, certain water pipeline contractors would not be able to bid if they were not able to engage in joint ventures or sub-contracts or if they were not able to purchase, sell, lease, or rent water pipeline contracting supplies and equipment.

VII

DETERMINATIVE MATERIALS AND DOCUMENTS

No materials or documents were considered determinative by the United States in formulating the proposed Final

Judgment. Consequently, none is being filed pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b).

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