UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA, Plaintiff, v. MARSH A. COOPER; THE SUPERIOR OIL COMPANY; and TEXAS EASTERN TRANSMISSION CORPORATION, Defendants.	)	Civil Action No. 76-H-630 Filed: April 13, 1976

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 of America hereby files this Competitive Impact Statement relating to the proposed Consent Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The complaint in this proceeding, which alleges that the defendants violated Section 8 of the Clayton Act, was filed on April 13, 1976 . The proposed Consent Judgment was filed concurrently, having been negotiated prior to the filing of the complaint.

Section 8 of the Clayton Act prohibits an individual from serving on the Boards of Directors of competing corporations. The complaint alleges that defendant Marsh A. Cooper served simultaneously as a director of defendants Superior Oil and Texas Eastern, who are and have been competitors. The complaint also alleges that the corporate defendants violated the same section by permitting Marsh A. Cooper to be elected and to serve as a director of both corporations simultaneously.

Section 8 of the Clayton Act is prophylactic in nature. As such, no overt anticompetitive actions must be shown and none were alleged in the complaint. The purpose of this action is to eliminate the potential for anticompetitive activity that could result from a dual directorate -- that is the prospect that a director could utilize his position in two competing corporations to eliminate competition between them in violation of the antitrust laws.

II. Practice Giving Rise to the Alleged Violation

The specific practice involved in this action against the defendants is, of course, the fact that defendant Marsh A. Cooper has been, at the same time, a director of both defendant corporations. The defendant Marsh A. Cooper has, since 1973, been a director of Superior Oil. In addition, since 1970, he has been a director of Texas Eastern. This fact alone is sufficient to establish a violation of Section 8 of the Clayton Act as long as the statutory criteria are met by the corporations involved. Section 8 requires that one of the corporations must have capital, surplus, and undivided profits aggregating more than $1 million and must be engaged in commerce. In addition, both corporations must be competitors by virtue of their business and location of operation, so that elimination of competition by agreement between them would constitute a violation of the antitrust laws.

Both Superior Oil and Texas Eastern have assets exceeding $1 million and both are engaged in commerce. Superior Oil and Texas Eastern have actively engaged in efforts to acquire interests in oil and gas producing properties leased by the Federal Government in accordance with the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1343). Since June 19, 1973, Superior Oil and Texas Eastern have bid against each other in at least twenty-five instances to obtain from the Federal Government interests in identical potential oil and gas producing properties.

III. Proposed Consent Judgment

The proposed Consent Judgment (Section IV(A)) enjoins defendant Marsh A. Cooper, for a period of twenty years from date of entry of the Consent Judgment, from serving as a director of one of the corporate defendants or any of its subsidiaries while serving as a director of the other corporate defendant or any of its subsidiaries.

The Consent Judgment (Section IV(B)) prohibits each corporate defendant (Superior Oil and Texas Eastern), for a twenty-year period, from permitting any person to serve as a director on its Board of Directors or the Board of any subsidiary engaged in commerce in oil and gas while such person is serving as a director of the other corporate defendant or any of its subsidiaries engaged in commerce in oil and gas.

It also prohibits (Section IV(C)) each defendant for twenty years from having a common director on its Board, or the Board of any subsidiary engaged in commerce in oil and gas, and any other corporation which competes with the defendant or its subsidiary. Therefore if a subsidiary of one of the defendants were to compete with another corporation in commerce in oil and gas, even though that corporation was not a direct competitor of the defendant, any interlock between the defendant and such other corporation would be prohibited by this Consent Judgment.

Commerce in oil and gas is defined in the Consent Judgment (Section II(B)) as the production and sale of crude petroleum and natural gas in interstate commerce or the acquisition of or effort to acquire interests in oil or gas producing properties.

Interlocks between a corporate defendant and its subsidiaries (subsidiary defined as any corporation in which more than 50% of the stock entitled to vote for directors is, directly or indirectly, owned or controlled by a corporate defendant) are specifically excluded from the prohibitions of the Final Judgment. In addition, Superior Oil's subsidiary, Canadian Superior Oil Ltd., is expressly excluded because, due to circumstances outside its control, Superior may in the future be warranted in reducing its ownership interest in its Canadian subsidiary to slightly less than 50%.

Finally, the Consent Judgment requires each corporate defendant to take affirmative steps to comply with the Consent Judgment. Section V requires each corporate defendant to file an affidavit with the Court and the United States as to the fact and manner of compliance within sixty days of entry of the Consent Judgment. Moreover, Section VI requires that, for a ten-year period, each corporate defendant take affirmative steps to comply with the terms of the Consent Judgment and file affidavits annually to that effect.

IV. Anticipated Effects on Competition

The evidence in this case did not encompass known restraints of trade but did encompass the probability that such restraints might result from the interlocking directorate involved. Thus, the impact on competition of the Consent Judgment cannot be measured in terms of specific effects which might release identifiable competitive forces. The sole anticipated effect upon competition is the removal of the danger that anti-competitive effects will result from the interlocking directorate.

V. Remedies Available to Potential Private Plaintiffs

This Consent Judgment may not be used in private litigation as prima facie evidence that the antitrust laws have been violated, pursuant to Section 5(a) of the Clayton Act (15 U.S.C. 16(a)). However, anyone damaged by the alleged violation retains the right to sue for money damages and all other legal and equitable remedies, just as if the proposed Consent Judgment had not been entered.

VI. Procedures Available For Modification of Consent Judgment

This proposed Consent Judgment is subject to a stipulation between the parties that the United States may withdraw its consent to the Consent Judgment at any time within 60 days or until the Court finds that entry of the Consent Judgment is in the public interest. Any persons so desiring may submit written comments relating to the proposed judgment for consideration by plaintiff to Joseph J. Saunders, Chief, Public Counsel and Legislative Section, Antitrust Division, Department of Justice, Washington, D. C. 20530. Such comments, together with responses thereto, will be filed with the Court and published in the Federal Register.

VII. Description and Evaluation of Alternatives to this Proposed Consent Judgment

The United States considered one alternative to the proposed Consent Judgment. That alternative would have enjoined the defendant corporations from having a director sit on the Board of Directors of any corporation engaged in a broader line of commerce, designed to include the production, refining, wholesale or retail marketing and distribution of petroleum, petroleum products, and gas.

In addition, the provisions of that proposed judgment were permanent. Finally, that judgment ordered defendant Marsh A. Cooper to withdraw from participation in the direction, control, or conduct of the business of the corporate defendant from which he resigns.

The government believes that the narrower definition contained in the proposed Consent Judgment prohibits those interlocks where there would be any adverse competitive effect. It further believes that the broader definition of commerce might have inhibited interlocks between corporations which in fact might not be competitors within the meaning of Section 8 of the Clayton Act.

The defendants proposed that the decree be limited to five years. The government determined that, given the nature of the violation alleged, a twenty-year period would be sufficient time to assure the defendant's future compliance and would not be unreasonably oppressive.

Finally upon notice from the government of its intention to file suit, Marsh A. Cooper resigned from the Board of Directors of Texas Eastern.

There are no materials or documents, which the government considered determinative in formulating this proposed Consent Judgment. Therefore, none is being filed along with this Competitive Impact Statement.

Respectfully submitted,

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