UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA, Plaintiff, v. GREAT LAKES COAL & DOCK COMPANY; HOMETOWN, INC.; and YOUGHIOGHENY & OHIO COAL COMPANY, Defendants.	)	Civil Action No. 72-C-211 Judge John W. Reynolds Filed: April 1, 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

On April 11, 1972, the United States filed a civil complaint under Section 4 of the Sherman Act (15 U.S.C. § 4), alleging that defendants Great Lakes Coal & Dock Company, Hometown, Inc., and Youghiogheny & Ohio Coal Company, violated Section 1 of the Sherman Act (15 U.S.C. § 1). The complaint alleged that defendants and various co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate commerce, the substantial terms of which were (a) to fix, raise and maintain the price of dock coal sold to retail and commercial customers in Milwaukee County, Wisconsin;

(b) to allocate customers in Milwaukee County among themselves; and (c) to rig bids on sales of dock coal made to municipal, county, state and federal institutions in Milwaukee County.

Entry by the Court of the proposed Consent Judgment will terminate the action, except that the Court will retain jurisdiction over the matter for possible further proceedings which might be required to interpret, modify or enforce the Judgment, or to punish alleged violations of any of the provisions of the Judgment.

II

DESCRIPTION OF PRACTICES INVOLVED IN THE ALLEGED VIOLATION

The defendants and co-conspirators were engaged in the sale of dock coal to retail, commercial, governmental, and other institutional customers located in Milwaukee County, Wisconsin.

Dock coal is coal unloaded on the dock coal company's own docks for storage and later shipment to customers by rail or truck, or coal unloaded at the customers' own docks. The defendants and co-conspirator dock coal companies purchased dock coal for resale.

In addition to the three corporate defendants, the following corporations were named as co-conspirators: The C. Reiss Coal Company, Consolidation Coal Company, The Jacobus Company, and Schneider Fuel & Dock Company.

The complaint alleged that the defendants and co-conspirators engaged in a conspiracy to fix prices, allocate customers and rig bids. The conspiracy, which began prior to 1965, involved meetings, discussions and agreements among officials of defendants and co-conspirators concerning prices, the allocation

of various governmental, institutional and commercial customers, and the rigging of bids to various governmental and institutional customers.

According to the complaint, the alleged conspiracy had the following effects: (a) price competition in the sale of dock coal was restrained and eliminated; (b) dock coal prices were raised and stabilized at artificial and noncompetitive levels; and (c) purchasers were deprived of the benefits of free and open competition in the sale of dock coal and of the opportunity of buying dock coal at competitive prices.

III

EXPLANATION OF THE PROPOSED CONSENT JUDGMENT

The United States and the defendants have agreed, in a Stipulation, that the Consent Judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The Stipulation also provides that there has been no 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 (15 U.S.C. § 16(e)), entry of said Judgment by the Court is conditioned upon its determination that the proposed Judgment is in the public interest.

A. Prohibited Conduct

The proposed Consent Judgment will prohibit the defendants from entering into any agreement to fix or maintain prices, discounts, or other terms or conditions for the sale of dock coal. Also prohibited are any agreement or understanding to allocate customers, territories or markets for dock coal and any agreement to rig bids on dock coal sales to retail,

commercial, industrial, municipal, county, state and federal customers.

The Consent Judgment will further eliminate the discussion of prices among the defendants or with other dock coal competitors, prior to such information being known to the public or trade, except in bona fide purchase and sale transactions and agency-broker relations.

B. Scope of the Proposed Judgment

The Consent Judgment applies not only to the defendant corporations but also to their directors, officers, employees and agents, as well as to any successors or assigns of the defendant corporations. It also applies to anyone participating with the defendants who receives actual notice of the Judgment.

The Judgment is geographically applicable to the entire United States. In duration, the Judgment perpetually restrains the prohibited conduct; i.e., unless the Court either modifies or vacates all or part of the Judgment, the defendants are forever bound by its prohibitions.

C. Effect of the Proposed Judgment on Competition

The proposed Judgment will require the defendants to arrive at their respective dock coal prices independently of each other, if not already done, and will reopen competitive bidding and competitive pricing in general in sales to private as well as public purchasers. The Judgment will also reopen, to all purchasers, sources of supply for dock coal, freed from agreements allocating customers' business to certain dock coal companies.

Where sealed bids are requested, the defendants are required, for the next five years, to submit with every sealed bid a certification by a responsible official that the amount of the bid was not arrived at collusively.

The Judgment also requires each defendant to submit annual reports, for the next ten years, outlining the steps it has taken to comply with the provisions of the decree. The Government is also given access, upon reasonable notice, to the records and employees of the defendants to monitor their compliance with the provisions of the Judgment.

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 such person has suffered, as well as costs and reasonable attorney fees. Had the Government successfully litigated this lawsuit, the Judgment could have been used as prima facie evidence by a potential private litigant. Entry of the proposed Consent Judgment in this proceeding will neither impair nor assist the bringing of any such private antitrust actions. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), this Consent Judgment has no prima facie effect in any subsequent private lawsuits which may be brought against these defendants.

V

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Judgment should be modified may submit written comments to John A. Weedon, Chief, Great Lakes Field Office, 995 Celebrezze Federal Building, Cleveland, Ohio 44199, within the 60-day period provided by the Act. These comments and the responses to them will be filed with the Court and published in the Federal Register.

All comments will be given due consideraton by the Department of Justice, which remains free to withdraw its consent to the proposed Consent Judgment at any time prior to its entry.

VI

ALTERNATIVES TO THE PROPOSED CONSENT JUDGMENT

This case does not involve any unusual or novel issues of fact or law which might make litigation a more desirable alternative than entry of the proposed Consent Judgment. The United States considered one alternative to the proposed Judgment. That alternative was a proposed decree which would have enjoined the defendants regarding all types of coal, not just dock coal. However, because the complaint charged a conspiracy limited to dock coal, and because the proposed Final Judgment completely enjoins the continuation of the alleged conspiracy in dock coal, the Antitrust Division considered the substantive language in the Judgment to be of sufficient scope and effectiveness to make litigation on further relief inappropriate. The Government does not believe that it could secure any additional relief if it prevailed at trial. Therefore, the alternative to the proposed Judgment, namely, proceeding to trial, was not considered to be in the public interest in terms of cost, risk and possible additional relief. Further, should the defendants in this case engage in illegal conspiratorial activity in the future in products not subject to this Judgment, they will remain liable to prosecution under the Sherman Act itself rather than this Final Judgment. Conviction of violations under the Sherman Act now or in the future would subject the defendants to the substantially higher felony penalties.

VII

OTHER MATERIALS

There are no materials or documents which were determinative in formulating the proposal or Consent Judgment; consequently, none are being filed by the Plaintiff pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)).

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