

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	80 Civ. 5520 (LWP)
	)	
ASSOCIATION OF SHIP BROKERS AND	)	
AGENTS (U.S.A.), INC. and	)	
WORLDSCALE ASSOCIATION (NYC),	)	
INC.,	)	
	)	
Defendants.	)	

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COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), the United States hereby files this Competitive Impact Statement, relating to the proposed Final Judgment submitted for entry in this case. The defendants have stipulated their acceptance of the proposed Judgment.

I.

The Nature and Purpose of the Proceeding

On September 30, 1980, the Department of Justice (Department) filed a civil antitrust suit alleging that the Association of Ship Brokers and Agents (U.S.A.), Inc., (ASBA) and Worldscale Association (NYC), Inc., (Worldscale Association) engaged in a combination and conspiracy to fix the brokerage fees charged by brokers of oil tankers, in violation of section 1 of the Sherman Act. 15 U.S.C. §1. The Department's Complaint charges that defendants adopted, published, circulated, promoted, and used, as part of a nominal scale of values for oil tanker voyages, a fixed brokerage commission figure for arranging charter voyages of oil tankers on the spot market.

The Complaint seeks a judgment by the court declaring that the defendants have engaged in an unlawful combination and conspiracy in restraint of trade in violation of the Sherman Act. It seeks an order by the court that will enjoin and

restrain defendants from engaging in such activities, or in other activities having a similar purpose or effect, in the future. The Complaint also asks the court to order defendants ASBA and Worldscale Association to take actions to eradicate the effects of the past activities.

## II.

### Description of the Practices Giving Rise to the Alleged Violations of the Antitrust Laws

Oil tankers transport petroleum and petroleum products from oil producing regions of the world to the United States. When a firm that wishes to transport petroleum does not own a suitable and available tanker, or have one on long-term charter, it must charter a tanker on the spot market. The spot market for tanker charters consists of charterers seeking tankers for single voyages, and owners with tankers available for such voyages. An agreement between a tanker owner and a charterer is called a "fixture."

Oil tanker brokers are firms that are in the business of arranging spot market fixtures of oil tankers. A charterer will generally contact several brokers to give them the requirements for the voyage, such as the date of loading, the destination, and the size of tanker needed. The brokers, in competition with one another, seek to locate an appropriate available tanker, generally by contacting other brokers who represent tanker owners. The charterer and the owner, or owners, then negotiate, through the brokers, until an agreement is reached as to the price, terms, and conditions of the charter. Ordinarily, there are two brokers involved in a spot market transaction, one that deals primarily with the owner and one that deals primarily with the charterer. A broker usually handles the documentation for the transaction, and payment for the charter is often made through the broker.

In the past, the brokers involved in such a transaction have usually been compensated by a commission that is a

percentage of the total freight charges due. The brokerage commission in the vast majority of such transactions is 1 1/4 percent per broker, or 2 1/2 percent on typical fixtures, where two brokers are involved.

Defendant ASBA is a trade association of oil tanker brokers and others in maritime brokering or agency representation businesses. ASBA has a Tanker Committee which includes several brokers as members. The brokers that are members of ASBA are competitors, and most brokers in the United States are members of ASBA.

Defendant Worldscale Association was created by ASBA, and staffed with former ASBA employees, for the purpose of sponsoring and maintaining the Worldwide Tanker Nominal Freight Scale (WORLDSCALE) in the United States.

WORLDSCALE is a nominal value scale that is widely used in quoting prices for tanker charters. WORLDSCALE sets forth nominal per-ton rates for tens of thousands of possible port-to-port voyages. Price quotations for charters are generally made in terms of the WORLDSCALE nominal rate, which is called WORLDSCALE 100. Thus, a charterer might offer a rate equal to 150 percent of the WORLDSCALE nominal rate. This would be quoted as WORLDSCALE 150. Prices quoted and charged in the market are both above and below WORLDSCALE 100, depending on the size and characteristics of the vessel, the voyage, and supply and demand.

The WORLDSCALE nominal rates are calculated on the basis of fuel costs, transit time, port charges, and so on, for a 19,500 ton tanker. The characteristics of this standard tanker, which is much smaller than most tankers in use today, remain constant in the calculation of every edition of WORLDSCALE. Port charges and fuel prices, however, are updated frequently. Consequently, WORLDSCALE is useful in two ways. First, WORLDSCALE provides a basis by which rates for different voyages may readily be compared. Second, use of WORLDSCALE

allows fixtures conveniently to be agreed upon on the basis of a range of ports. For example, a price may be quoted "from a Persian Gulf port to a United States Gulf port," without specifying different prices for each possible port pair to reflect the different port charges or distances that would be involved.

WORLDSCALE was first published in 1969. It was published jointly by ASBA and a group of British brokers. WORLDSCALE replaced the two previous nominal rate scales which had been maintained separately by ASBA and the British brokers. WORLDSCALE therefore represented a merger of the two previous nominal rate scales, one of which contained a brokerage element and one of which did not. When ASBA and the British brokers' group merged their rate scales, they decided to publish a 2 1/2 percent brokerage commission element in the new WORLDSCALE.

Since 1969, WORLDSCALE has been regularly republished, first on a yearly basis and then, after 1976, at six-month intervals. ASBA "spun off" a group to publish and sponsor WORLDSCALE in the United States. This group, which was first called the Association of Ship Brokers and Agents (Worldscale), Inc., is defendant Worldscale Association.

Each edition of WORLDSCALE lists the elements that go into its calculation, and this list includes an element that states, "Brokerage: 2.5%." WORLDSCALE thus includes a regular publication of the price for brokerage services.

Finally, the brokerage commission rate set forth in WORLDSCALE is reinforced by the ASBA Code of Ethics. The Code, which applicants for ASBA membership agree in writing to follow, contains the provision that "unless otherwise agreed in advance, a member's compensation shall not exceed that which is customary for the services rendered."

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

(1) the commission charged for oil tanker brokerage services involved in the arrangement of oil tanker fixtures has been fixed, stabilized and maintained at artificial and non-competitive levels;

(2) price competition in the provision of oil tanker brokerage services has been restrained; and

(3) purchasers of oil tanker brokerage services have been deprived of the benefit of free and open competition in the market for such services.

### III.

#### Explanation of the Proposed Final Judgment

The United States and the defendants have stipulated that a Final Judgment, in the form filed with the court, may be entered by the court at any time after compliance with the Antitrust Procedures and Penalties Act. The proposed Final Judgment provides that the entry of the Final Judgment does not constitute any evidence against, or admission by, any party with respect to any issue of law or fact. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, entry of the proposed Final Judgment is conditioned upon the court finding that its entry will be in the public interest.

The proposed Final Judgment contains two principal forms of relief. First, defendants are enjoined from repeating the behavior that characterized the combination and conspiracy. Second, the proposed Final Judgment places affirmative burdens on defendants to provide certain affected persons in the industry with notice of this action and decree in order to avoid a repetition of the combination and conspiracy, to eradicate its effects, and to allow the market to operate freely.

#### A. Prohibited Conduct

Section V of the Proposed Final Judgment prohibits defendants, whether acting unilaterally or with any other person,

from entering into, adhering to, maintaining, or furthering any contract, agreement, understanding, plan, or program to fix, maintain, or stabilize the fees charged by oil tanker brokers for rendering oil tanker broker services.

Section VI enjoins and restrains defendant ASBA from adopting, maintaining, publishing and distributing any code of ethics or other document defining standards of conduct for its members or for oil tanker brokers that makes any recommendation, proposal, or suggestion with respect to the fees charged or to be charged by oil tanker brokers or by its oil tanker broker members.

Section VIII enjoins and restrains defendant Worldscale Association from issuing, creating, maintaining, publishing, or perpetuating any scale or system of calculation of values or costs of tanker voyages that includes a fee for the services of oil tanker brokers.

B. Affirmative Obligations of the Defendants.

Section VII of the proposed Final Judgment orders and directs defendant ASBA, within sixty (60) days of the entry of the Final Judgment, to amend its code of ethics by deleting the provision in its code of ethics that states "Unless otherwise agreed in advance, a member's compensation shall not exceed that which is customary for the services rendered."

Section IX orders and directs Worldscale Association to amend its method of calculation of WORLDSCALE in a manner necessary to comply with Section VIII and to eliminate any component or element of the calculation that is inconsistent with any provision of the Final Judgment, beginning with its January 1, 1982 edition. This section will require Worldscale Association to remove the brokerage element from its method of calculation of WORLDSCALE.

Section X orders and directs defendant ASBA to furnish, within thirty (30) days from the date of entry of the Final Judgment, a copy of the Final Judgment to each of its officers

and members and to furnish a copy of this Final Judgment to each person who becomes a member of defendant ASBA.

Section XI orders and directs defendant Worldscale Association to furnish, within thirty (30) days of the entry of the Final Judgment, a copy of the Final Judgment to all persons in the United States who have, within the last three years, subscribed to WORLDSCALE. Under section XI, Worldscale Association is also directed to send a letter to such persons notifying them that commissions for oil tanker brokerage are freely negotiable, and that Worldscale Association takes no position on what level brokerage commissions should be or how they should be computed. This letter will also be sent to all United States subscribers to WORLDSCALE with each new edition of WORLDSCALE for three years.

Finally, under Section XII of the proposed Final Judgment, the Justice Department will have access, upon reasonable notice, to the records and personnel of defendant ASBA and defendant Worldscale Association in order to determine their compliance with the Judgment.

C. Scope of Proposed Judgment.

(1) Persons Bound by the Decree. The proposed Final Judgment expressly provides in Section III that its provisions apply to the defendants, and to their officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who receive actual notice of the Final Judgment. Section III also provides that, for purposes of Section III, a member of ASBA shall not be deemed to be in active concert or participation solely by virtue of his, her, or its membership. Section IV of the Judgment prohibits defendant Worldscale Association from selling or transferring all or substantially all of its assets used by it in creating, maintaining, and distributing WORLDSCALE, unless the acquiring party files with

the court its consent to be bound by the provisions of the Judgment.

(2) Duration of the Decree. Section XIII provides that the proposed Final Judgment will expire on the tenth anniversary of its date of entry.

D. Effect of the Proposed Judgment on Competition.

WORLDSCALE is a joint activity among oil tanker brokers and is in large part useful as it permits the market for oil tankers to operate efficiently. WORLDSCALE contains one element, however, that is unnecessary to operation of WORLDSCALE or to the smooth working of the oil tanker market. This is the agreement among brokers to publish a price for brokerage services as a part of WORLDSCALE. The proposed Final Judgment, by eliminating this element, will eradicate the anticompetitive effects of publishing an agreed price for brokerage services, yet it will leave untouched the useful functions of WORLDSCALE.

Thus, the terms of Sections V, VI, VII, VIII, and IX of the proposed Judgment are designed to ensure that oil tanker brokers will act independently in determining the fees for their services, and that neither ASBA nor Worldscale Association will in any way suggest, maintain, or recommend adherence to a fixed fee for such services. The affirmative obligations of section X are designed to ensure that officers and members of ASBA are aware of this proposed Final Judgment. The provisions of Section XI are designed to ensure that persons in the United States who have subscribed to WORLDSCALE within the last three years are aware of this proposed Final Judgment and of the fact that fees are freely negotiable. Compliance with the proposed Judgment will prevent collective action by brokers on fees to be charged for the provision of oil tanker broker services. Compliance will not impinge on the useful functions that WORLDSCALE serves.



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 proposed Judgment had not been entered. The proposed 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 Consent Judgment

The proposed Final Judgment is subject to a stipulation between the Government and defendants ASBA and Worldscale Association which provides that the Government may withdraw its consent to the proposed Judgment any time before entry of the proposed Judgment. By its terms, the proposed Judgment also provides for the court's retention of jurisdiction of this action in order to permit any of the parties to apply to the court for such orders as may be necessary or appropriate for the modification of the Final Judgment.

As provided by the Antitrust Procedures and Penalties Act, 15 U.S.C. §16, any person wishing to comment upon the proposed Judgment may submit, within the statutory sixty-day period, written comments to the United States Department of Justice, Attention: Elliott M. Seiden, Chief, Transportation Section, Antitrust Division, U.S. Department of Justice, Washington, D.C. 20530. Such 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 proposed Final Judgment.

VI.

Alternative 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 Antitrust Division considers the substantive language of the proposed Judgment to be of sufficient scope and effectiveness to make litigation on the issues unnecessary, as the Judgment provides appropriate relief against the violations alleged in the complaint. The proposed judgment contains substantially all the relief that was requested in the Complaint.

VII.

Determinative Materials and Documents

No materials or documents were considered determinative by the United States in formulating the proposed Final Judgment. Therefore, none is being filed pursuant to the Antitrust Procedures and Penalties Act. 15 U.S.C. §16(b).

  
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