UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff; v. HALLIBURTON COMPANY and DRESSER INDUSTRIES, INC., Defendants.	)	Case Number: 98-CV-2340 (TPJ) Judge Thomas Penfield Jackson

JOINT MOTION TO MODIFY FINAL JUDGMENT

Plaintiff United States, Defendant Halliburton Company ("Halliburton"), and W-H Energy Services, Inc. ("W-H")[1] hereby jointly move, pursuant to Section XI of the Final Judgment, for modification of the requirement that Halliburton's wholly owned subsidiary, Halliburton Energy Services, Inc. ("HESI") make its current test well in Fort Worth, Texas available to the purchaser of the assets divested pursuant to the Final Judgment. That requirement is set forth in Paragraph 4(a) of Schedule A to the Final Judgment, which describes the terms and commitments of the divestiture that is required by Section IV of the Judgment. Paragraph 4(a) states in pertinent part:

> HESI will make its current test well in Fort Worth, TX available to purchaser for a period of two years for a charge not to exceed the amount charged by AMOCO at its test well in Catoosa, OK, which is available on a rental basis to the industry.

The United States, Halliburton, and W-H seek to modify this provision to permit the substitution

[1] W-H purchased the Halliburton assets that were divested pursuant to the Final Judgment. The Final Judgment required, as a condition of the sale, that W-H agree to be bound by the provisions of the Final Judgment.

of access to the test well at Catoosa, Oklahoma for access to the Fort Worth, Texas facility. The Catoosa facility, which is now owned by the Gas Research Institute, an industry group, is a superior testing facility. The substitution does not materially change Halliburton's obligations under the Judgment, and W-H supports the substitution.

I. BACKGROUND

The Complaint, filed on September 29, 1998, alleged that Halliburton and Dresser were two of only four companies that provided logging-while-drilling ("LWD") services to oil and gas drilling companies and were two of only four sources of current and likely future innovations in new and improved LWD tools. Oil and gas companies use data from LWD tools to guide drilling operations, particularly in offshore drilling projects. The Complaint alleged that the merger of Halliburton and Dresser would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and requested that Defendants be enjoined from merging.

The United States and Defendants filed simultaneously with the Complaint on September 29, 1998, a proposed Final Judgment designed to eliminate the alleged anticompetitive effects of the merger. The Final Judgment, which was entered on April 1, 1999, required Halliburton to divest to an appropriate purchaser "the LWD Business," which was defined in the Final Judgment as HESI's worldwide business providing LWD Services and described in Schedule A of the Final Judgment. The LWD Business included, among other assets, virtually all of Halliburton's LWD tools; LWD manufacturing equipment; access for two years to its Fort Worth test well; an LWD facility in Louisiana; worldwide, royalty-free, irrevocable, non-exclusive licenses to the intellectual property used in connection with the use, manufacture, or sale of the transferred tools; and LWD research and development equipment.

On January 22, 1999, Halliburton and W-H executed a contract for the sale of the LWD

Business in satisfaction of Halliburton's obligations under the Final Judgment. After evaluating W-H and the contract, the Department of Justice approved W-H as a purchaser of the divestiture package. The transaction was consummated on March 29, 1999, and W-H has had access to Halliburton's Fort Worth test well since that time.

Halliburton now wishes to close its Fort Worth test facility and has made arrangements for W-H to use the test facility in Catoosa, Oklahoma. The Department has concluded that these alternative arrangements are acceptable.

II. THE LEGAL STANDARDS APPLICABLE TO MODIFICATION OF AN ANTITRUST JUDGMENT WITH THE CONSENT OF THE GOVERNMENT

This Court entered the Final Judgment on April 1, 1999, having found that it was in the public interest to do so. This Court has jurisdiction to modify the Final Judgment pursuant to Paragraph XI of the Judgment, Fed. R. Civ. P. 60(b) (5), and "principles inherent in the jurisdiction of the chancery." United States v. Swift & Co., 286 U.S. 106, 114 (1932); see also In re Grand Jury Proceedings, 827 F. 2d 868, 873 (2d Cir. 1987). Where, as here, the United States has consented to a proposed modification of a judgment, the issue before the Court is whether modification is in the public interest. See, e.g., United States v. Western Elec. Co., 993 F. 2d 1572, 1576 (D.C. Cir. 1993); United States v. Western Elec. Co., 900 F. 2d 283, 305 (D.C. Cir. 1990); United States v. Loew's, Inc., 783 F. Supp. 211, 213 (S.D.N.Y. 1992); United States v. Columbia Artists Management, Inc., 662 F. Supp. 865, 869-70 (S.D.N.Y. 1987) (citing United States v. Swift & Co., 1975-1 Trade Cas. (CCH) ¶ 60,201, at 65,702-03 (N.D. Ill. 1975)). Cf. United States v. American Cyanamid Co., 556 F. Supp. 361, 367 (S.D.N.Y. 1983), rev'd on other grounds, 719 F.2d 558 (2d Cir. 1983).

Where the Department of Justice has offered a reasoned and reasonable explanation of

why the modification vindicates the public interest in free and unfettered competition, and there is no showing of abuse of discretion or corruption affecting the government's recommendation, the Court should accept the Department's conclusion concerning the appropriateness of modification of the decree. In addition, where, as in this case, the proposed modification does not materially affect the substance of Defendant's obligations, no detailed analysis is required to conclude that the Final Judgment as modified will continue to satisfy the public interest.

III. THE PROPOSED MODIFICATION SATISFIES THE PUBLIC INTEREST STANDARD

The divestiture package described in the Final Judgment was designed to ensure that the purchaser was viable and put in Halliburton's place as an international LWD company. Because an LWD firm needs to test its tools, the package included access to a test well, specifically Halliburton's Fort Worth, Texas test well. Now that Halliburton wishes to close that particular test well, the proposed modification would substitute another, superior facility for Halliburton's Fort Worth facility and provide W-H with access to that facility for more days than it would likely require. In addition, W-H will continue to pay Halliburton a rate no greater than that specified in the Final Judgment, i.e., the commercial rate for the Catoosa facility. In W-H's business judgment, the Catoosa facility will offer it more flexibility for testing, and the terms for the Catoosa facility to which it has agreed with Halliburton are satisfactory.

The Department of Justice has concluded that the proposed modification substituting the Catoosa, Oklahoma facility for Halliburton's Fort Worth, Texas test well will fulfill the purpose of the Judgment provision guaranteeing the purchaser access to a test well. The Department has determined that the modification is therefore in the public interest.

IV. A PUBLIC COMMENT PERIOD IS UNNECESSARY

The Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (b)-(h), does not expressly apply to the modification of entered final judgments.[2] Nonetheless, the Department and the courts have concluded that notice to the public and opportunities for comments are appropriate where significant decree modifications are proposed.[3] Here, however, the modification is a minor one that does not have a material effect on Halliburton's obligations under the decree, and the purchaser whose viability the Final Judgment was intended to ensure has consented to the modification. Thus, no public comment period is necessary for a determination that the proposed modification is in the public interest.[4] Halliburton will continue to be obligated to make a test well available to W-H until two years after the divestiture, and, with the modification, W-H will have access to a superior test well than was specified originally in the Judgment for more days than it anticipates will be necessary and at a rate less than it would pay commercially for the facility. Accordingly, the public interest will be served by having the modification made as soon as possible to permit Halliburton and W-H to proceed with their arrangements with respect to the

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[2] The procedures mandated by the APPA govern federal district courts' consideration of "[a]ny proposal for a consent judgment submitted by the United States" 15 U.S.C. § 16(b), and are designed to facilitate a public interest determination "[b]efore entering any consent judgment proposed by the United States." 15 U.S.C. § 16(e).

[3] See United States v. AT&T, 552 F. Supp. 131, 144-45 (D.D.C. 1982), aff'd. sub nom. Maryland v. United States, 460 U.S. 1001 (1983).

[4] Few courts have addressed the issue of the applicability to judgment modifications of the APPA. Courts in this district have made non-material modifications of Final Judgments without requiring notice to the public and opportunity for comments. United States v. Tidewater, Inc., et al., Civil Action No. 92-106 (D.D.C. October 7, 1992, Judge Thomas F. Hogan); United States v. Baker Hughes, Civil Action No. 90-0825 (D.D.C. June 20, 1990, Judge Louis F. Oberdorfer). Two courts have held that the APPA is not applicable to judgment termination proceedings, suggesting that those courts would not view the APPA as applicable to minor judgment modifications (United States v. American Cyanamid Co., 719 F.2d at 565 n.7; United States v. General Motors Corp., 1983-2 Trade Cas. ¶ 65,614 at 69,093 (N.D. Ill. 1983)). But see United States v. Motor Vehicle Mfrs. Ass'n, 1981-2 Trade Cas. ¶ 64,370 (C.D. Cal. 1981).

Catoosa facility.

IV. CONCLUSION

For the foregoing reasons, the United States, Halliburton, and W-H request that the Court enter the proposed Order Modifying Final Judgment submitted with this motion.

Dated: March 9, 2000

Respectfully submitted,

FOR PLAINTIFF THE UNITED STATES

"/s/"

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