

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

UNITED STATES OF AMERICA,       )  
                                      )  
                  Plaintiff,       )  
                                      )  
                  v.                 )  
                                      )  
THE DICKERSON GROUP, INC.,       )  
                                      )  
                  Defendant.       )

Civil Action No. C-C-81-328

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 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                               1981, the United States filed a civil antitrust complaint under Section 4 of the Sherman Act (15 U.S.C. § 4) to enjoin the defendant from continuing or renewing violations of Section 1 of the Sherman Act (15 U.S.C. § 1).

Count One of the complaint alleges that beginning in or about October 1976, the defendant and unnamed co-conspirators engaged in a combination and conspiracy to restrain interstate commerce by submitting collusive, noncompetitive and rigged bids on highway construction Project 8.1115105 let by the State of North Carolina on November 2, 1976. Count Two of the complaint alleges that beginning in or about May 1978, the defendant and unnamed co-conspirators engaged in a conspiracy to restrain interstate commerce by submitting collusive, noncompetitive and rigged bids on highway construction Project 6.503019 let by the State of North Carolina on June 27, 1978. Count Three of the complaint alleges that beginning in or about November 1978, the defendant and unnamed co-conspirators engaged in a conspiracy to restrain interstate commerce by submitting collusive, noncompetitive

and rigged bids on highway construction Project 5.0411034, let by the State of North Carolina on December 19, 1978. The complaint seeks a judgment by the court that the defendant engaged in the combinations and conspiracies in restraint of trade in violation of Section 1 of the Sherman Act as alleged in Counts One, Two and Three of the complaint and an order to enjoin the defendant from continuing or resuming any conspiracy or other combination having similar purposes or effects.

This proceeding arose as a result of grand jury investigations into the bid-rigging activities of the defendant and others in North Carolina and South Carolina. On December 3, 1980, The Dickerson Group, Inc. was charged in a three-count information in the Western District of North Carolina with conspiring with others to submit collusive, noncompetitive and rigged bids on the three projects which are the subject of the complaint. United States v. The Dickerson Group, Inc., C-CR-80-116. On November 25, 1980, the company also was charged in a one-count information in the District of South Carolina with conspiring with others to submit collusive, noncompetitive and rigged bids on one highway construction project. United States v. The Dickerson Group, Inc., 80-262. Pursuant to plea agreements, the defendant pleaded guilty to both informations and was fined \$700,000 in North Carolina and \$150,000 in South Carolina.

## II

### THE TERMS OF THE ALLEGED CONSPIRACIES

During the period of time covered by the complaint, the defendant engaged in the business of highway construction in the State of North Carolina, as well as other states.

The complaint alleges that for each of the three projects, the defendant and unnamed co-conspirators conspired to restrain interstate commerce in violation of Section 1 of the Sherman Act, by submitting collusive, noncompetitive and rigged bids on highway projects that were part of the Federal-Aid highway system in the State of North Carolina. To effectuate the conspiracies, the complaint alleges that the defendant and unnamed co-conspirators discussed the submission of prospective bids, agreed the defendant would be the low bidder on the projects, and submitted intentionally high or complementary bids, or withheld bids on the projects. The complaint further alleges that the conspiracies had the effect of establishing the prices of the three projects at artificial and noncompetitive levels and of denying the State of North Carolina and the United States the benefits of free and open competition.

### III

#### EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The parties 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, 15 U.S.C. § 16(b)-(h). The proposed Final Judgment between the parties provides that the entry of the Final Judgment is not an 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, the proposed Final Judgment may not be entered unless the court determines that entry is in the public interest.

The proposed Final Judgment enjoins the defendant from entering into, adhering to, maintaining, enforcing or furthering, directly or indirectly, any contract, agreement,



understanding, plan, program, combination or conspiracy with any person to: (a) raise, fix, establish, maintain, stabilize or adhere to prices, discounts or any other term or condition of sale for road building work or the sale of asphalt to any third person; (b) submit noncompetitive, collusive or rigged bids or refrain from bidding on any contract for the sale of asphalt or road building work to any third person; and (c) allocate or divide jobs, markets, customers, territories or contracts for the sale of asphalt or road building work to any third person.

The proposed Final Judgment also enjoins the defendant from communicating with or requesting from any other person engaged in road building work or the sale of asphalt information concerning: (a) any past, present, future or proposed bid, or the consideration of whether to make any bid, for the sale of asphalt or road building work to any third person; (b) any past, present, future or proposed price, discount or other term or condition of sale for road building work or the sale of asphalt or the consideration of whether to make any change in any actual or proposed price, discount or other term or condition of sale for road building work or the sale of asphalt; or (c) sales or costs of road building work or asphalt sales, production, or costs. These restrictions on communication do not apply to: (a) any necessary communication in connection with formulating or submitting with any person a bona fide joint bid or quotation that has been requested by or is known to the purchaser; (b) any necessary communication in connection with a bona fide contemplated or actual purchase or sales transaction between the parties to the communication; and (c) any communication that is made to the public or trade generally, but not made directly to any other person engaged in road building work or the sale of asphalt.

The proposed Final Judgment requires the defendant to provide a copy of the Final Judgment to each of its employees who has any responsibility for bidding or estimating road building work or contracts for the sale of asphalt or authority over the establishment of prices for road building work or asphalt within 60 days after the judgment is entered. The defendant must also furnish a copy of the Final Judgment to each person who becomes an employee with the responsibilities described above within 60 days after the employee assumes the described position. In addition, the defendant is required to distribute at least once every two years, a copy of the Final Judgment and a written directive about the defendant's compliance policy to each of the described employees. The directive must include a warning that noncompliance will result in disciplinary action, which may include dismissal, and advice that the defendant's legal advisors are available to confer on compliance questions. Upon receipt of the judgment and directive, the employee must submit a signed statement to his or her employer acknowledging that the employee has read the judgment and directive, has been advised and understands that noncompliance with the judgment may result in disciplinary action, which may include dismissal, and has been advised and understands that noncompliance may also result in conviction for contempt of court and fine or imprisonment or both.

The proposed Final Judgment also provides that the defendant require, as a condition of the sale or other disposition of all, or substantially all, of the total assets of its road building work business or asphalt business, that the acquiring party agree to be bound by the provisions of the Final Judgment. The acquiring party must file with the court, and serve on the United States, its consent to be bound by the judgment.

The Department of Justice is given access under the proposed Final Judgment to the files and records of the defendant, subject to reasonable notice requirements, in order to examine such records to determine or secure compliance with the Final Judgment. The Department is also granted access to interview officers, directors, agents or employees of the defendant to determine whether the defendant and its representatives are complying with the Final Judgment. Finally, the defendant, upon the written request of the Department of Justice, shall submit reports in writing, under oath if requested, with respect to any of the matters contained in the Final Judgment.

The Final Judgment is to be in effect for ten years from its date of entry.

#### IV

##### REMEDIES AVAILABLE TO 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's fees. The entry of the proposed Final Judgment will neither impair nor assist any person bringing or prosecuting any treble damage antitrust claim arising out of the combinations and conspiracies charged in the complaint. Under Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), this Final Judgment may not be used as prima facie evidence in legal proceedings against the defendant.



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 Anthony V. Nanni, Chief, Trial Section, Department of Justice, Antitrust Division, 10th and Constitution Avenue, N.W., Washington, D.C. 20530, within the 60-day period provided by the Act. These comments, and the Department's responses, 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 Final Judgment at any time before its entry if it should determine that some modification is appropriate and necessary to the public interest. The proposed Final Judgment provides that the court retains jurisdiction over this action, and the parties may apply to the court for such orders as may be necessary or appropriate for its modification or enforcement.

VI

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

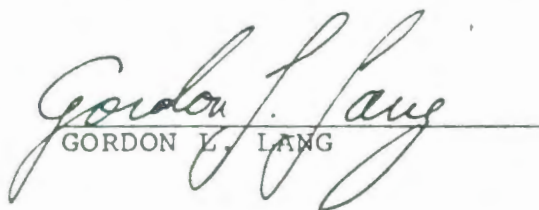
The proposed Final Judgment will dispose of the United States' claim for injunctive relief against the defendant. The only alternative available to the Department of Justice is a trial of this case on the merits. Such a trial would require a substantial expenditure of public funds and judicial time. Since the relief obtained in the proposed Final Judgment is substantially similar to the relief the Department of Justice would expect to obtain after winning a trial on the merits, the United States believes that entry of the proposed Final Judgment is in the public interest.

VII

DETERMINATIVE MATERIALS  
AND DOCUMENTS

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), were considered in formulating the proposed Final Judgment.

Respectfully submitted,

  
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Dated: