

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	Civil No. 90-1567
)	
Plaintiff,)	Filed: 7/5/90
)	
v.)	
)	
THE AMERICAN INSTITUTE OF ARCHITECTS,)	
)	
Defendant.)	
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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)-(h), the United States submits 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 July 5, 1990, the United States filed a civil antitrust complaint alleging that the American Institute of Architects ("AIA") conspired unreasonably to restrain price competition among AIA members in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

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The Complaint alleged that, beginning at least as early as August 1984 and continuing at least until February 1985, the AIA and its co-conspirators violated the Sherman Act by prohibiting AIA members from submitting price quotations where price is the sole or dominant consideration in the selection of an architect; prohibiting AIA members from providing discounts for architectural services; and prohibiting AIA members from providing architectural services without compensation. The complaint alleged that in September 1984, the Chicago Chapter of the AIA adopted a Compensation and Fee Policy which prohibited such practices. The Complaint further alleged that various national officers and employees of the AIA also endorsed and assisted in promoting and disseminating this Statement. The effects of the conspiracy have been to unreasonably restrain price competition among AIA members in the sale of their services and to deprive customers seeking the services of AIA members of the benefits of free and open competition in the sale of such services.

The relief sought in the Complaint was that the AIA be enjoined for a period of 10 years from renewing the conspiracy and that the AIA and each of its components be required to withdraw any provisions in their codes of ethics or other

statements which have the purpose or effect of suppressing price competition among AIA members. The complaint further asked that the AIA be required to institute a compliance program to ensure that the AIA and its components do not enter into or participate in any plan, program or other arrangement having the purpose or effect of continuing or renewing the conspiracy.

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

II

DESCRIPTION OF THE PRACTICES INVOLVED IN THE ALLEGED VIOLATION

At trial, the Government would have made the following contentions:

1. The AIA is a non-profit membership corporation organized and existing under the laws of the State of New York with its principal place of business located in Washington, D.C. The AIA has chartered approximately 280 local chapters and state organizations to represent the AIA throughout the United States.

2. The AIA's membership consists of about 54,000 licensed architects. The AIA is generally recognized as the national professional association of architects.

3. AIA members compete with each other in a wide variety of architectural activities. Among these activities are the planning, designing, and frequently the supervising of the construction of buildings and other structures, including churches, hospitals, monuments, airports, industrial parks, and urban renewal projects.

4. Beginning at least as early as September 1984, the AIA conspired with its members to restrain competition among its members in the sale of architectural services in violation of Section 1 of the Sherman Act. At that time, the Chicago Chapter of the AIA ("Chicago Chapter") adopted a Compensation and Fee Policy Statement which prohibited AIA members from engaging in competitive bidding, discounting fees or providing free services. The Compensation and Fee Policy Statement set forth the following principles, among others:

An architect shall not participate in any client request for a proposal where fee is the sole basis for selection.

Competition among architects which is based on the quality, nature, and type of services rendered is indicative of professional conduct and shall be encouraged. Pursuit of a commission shall be limited to the fair representation of the architect's professional experience, services, and capabilities. Architects shall not lead clients to believe that price is the dominant factor in the architectural selection process.

The fees charged by architects for professional services shall be based on the costs incurred to provide those services. Architects shall not reduce fees without appropriate reduction of services.

Architects shall not provide professional services without compensation.

5. The President of the Chicago Chapter at the time, Thomas J. Eyerman, was principally responsible for the initiation, promotion and adoption of the Compensation and Fee Policy Statement. Eyerman was also principally responsible for the subsequent wide publicity the Statement received and the dissemination of approximately 6,000 copies of the Statement to AIA members and to purchasers of architectural services in at least seven states. Various national officers and employees of the AIA and officers and employees of some of its other local and state components also endorsed and assisted in promoting and disseminating the Compensation and Fee Policy Statement.

6. This conspiracy deprived consumers of architectural services of the benefits of free and open competition in the sale of such services and inhibited AIA members from submitting price quotations where price is the sole or dominant consideration in the selection of an architect, providing discounts for architectural services, and providing architectural services without compensation.

7. All these activities occurred notwithstanding the fact that the AIA at the time was subject to a court order

enjoining the AIA from prohibiting or limiting the submission of price quotations for architectural services by AIA members, United States v. American Institute of Architects, 1972 Trade Cas. ¶ 73,981, modified, 1972 Trade Cas. ¶ 74,074 (D.D.C. 1972). The AIA had consented to the entry of that court order to settle a civil antitrust injunctive action the United States had brought against the AIA for banning competitive bidding. That court order is still in effect.

III

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and the AIA have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h). The proposed Final Judgment provides that its entry does not constitute any evidence against or admission by either 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), the proposed Final Judgment may not be entered unless the Court finds that entry is in the public interest. Section XVII of the proposed Final Judgment sets forth such a finding.

The proposed Final Judgment is intended to ensure that the AIA and its approximately 280 local and state components

completely eliminate all formal or informal ethical rules or statements proscribing competitive bidding, discounting, or the providing of free architectural services. It is also intended that AIA members and purchasers of architectural services be made aware that such forms of competition are permissible. The Judgment is intended to permit individual architects or architectural firms to make their own independent decisions whether to engage in such forms of competition and to express their own independent opinions regarding such practices. The Judgment will permit the AIA and its state and local components to advocate legislation or governmental actions restricting such practices.

A. Prohibitions and Obligations

Under Section III of the proposed Final Judgment, AIA and its components are enjoined from initiating or pursuing any plan or course of action which has the purpose or effect of prohibiting or restraining AIA members from (1) submitting, at any time, competitive bids or price quotations, (2) providing discounts, or (3) providing free services. Section III also enjoins AIA and its components from adopting or seeking adherence to any code of ethics or statement which has the purpose or effect of prohibiting or restraining AIA members from engaging in any such practices or which states or implies that any of these practices are, in themselves, unethical, unprofessional, or contrary to any policy of the AIA or any of its components.

Section IV of the proposed Final Judgment provides that any individual or architectural firm, acting alone and not on behalf of the AIA or any of its components, remains free to express an opinion regarding these practices and to refuse to engage in these practices. Section IV also provides that the AIA and its components remain free to advocate or discuss, in accordance with the doctrine established in Eastern Railroad Presidents Conference v. Noerr Motor Freight, 365 U.S. 127 (1961) and its progeny, legislation, regulatory actions or governmental policies or actions relating to these practices.

Section V of the proposed Final Judgment requires the AIA and its components to review their codes of ethics, manuals, and policy statements to eliminate therefrom any provision that prohibits or restrains AIA members from engaging in these practices or that states or implies that any of these practices are, in themselves, unethical, unprofessional, or contrary to any policy of the AIA or any of its components. Section V also requires the defendant and its components to publish in their codes of ethics during the term of the decree a prominently placed statement that these practices are not, in themselves, unethical, unprofessional, or contrary to any policy of defendant or its components. Section V further requires the AIA and its components to receive approval from a Decree Committee defendant must establish consisting of at least two

lawyers before any proposed code of ethics or written policy dealing with these practices can be disseminated beyond those persons responsible for drafting or issuing the proposal.

Section VI of the proposed Final Judgment requires the AIA to send to each of its components and members a copy of the proposed Final Judgment together with a written statement that AIA members are free to engage in competitive bidding, discounting, or the providing of free services regardless of anything defendant or its components may have said about these practices in the past. Section VI also requires the defendant to publish the proposed Final Judgment in the three consecutive issues of the AIA publication "Memo" following the date of entry of the proposed Final Judgment.

Section VI of the proposed Final Judgment further requires the defendant to do four other things for a period of ten years following entry of the Judgment. First, the defendant must send a copy of the Final Judgment to each new AIA member no later than 10 days after membership in the AIA is granted. Second, the AIA must provide annually to each director, officer, and Executive Management Committee member of defendant, each non-clerical employee of defendant's Component Affairs and Governmental Affairs Departments, the president of each of defendant's components, and each member of the Council of Architectural Components Executives, a copy of the Final Judgment and obtain written certification

from those persons each year that they received, read, understand, and agree to abide by the Final Judgment and understand that noncompliance with the Final Judgment may result in disciplinary measures and also may result in conviction of the person for criminal contempt of court. Third, the defendant must obtain annually from an official of each of its components a written certification, to the best of the certifying official's knowledge and belief, that copies of the Final Judgment have been distributed to the board and officers of the component, that each member of the board and each officer has read, understands, and agrees to abide by the Final Judgment, and that the antitrust compliance programs required of the component by Section VII of the proposed Final Judgment have been conducted. Fourth, the defendant must require annually an official of each component to report in writing any violation or potential violation of the Final Judgment to the Decree Committee established under the Judgment.

Section VII of the proposed Final Judgment requires the defendant to maintain an antitrust compliance program. Section VII provides that this antitrust compliance program must include (1) an annual briefing of defendant's Board of Directors, Executive Management Committee, officers, and non-clerical employees on the Final Judgment and the antitrust laws, (2) a program conducted for all participants at each

annual Grassroots convention of defendant on the Final Judgment and the antitrust laws, and (3) programs conducted annually at a general membership meeting of each of defendant's components and at each regularly scheduled regional meeting of defendant's components, on the Final Judgment and the antitrust laws.

Section VIII requires the defendant to establish a Decree Committee consisting of at least two attorneys within the General Counsel's office. Section VIII provides that the Decree Committee shall, on a continuing basis, supervise the review of the current and proposed activities of the AIA and its components to seek to ensure that the defendant and its components comply with the Final Judgment. Section VIII also provides that the Decree Committee shall maintain reasonable records of all its deliberations and meetings but that the Committee need not keep records of those activities that are clearly insignificant to the implementation of or compliance with the Final Judgment. Under Section VIII, the defendant must, within forty-five days of a member of the Decree Committee learning of any actual or proposed activity that violates or would violate Section III of the Final Judgment, undertake appropriate action to terminate or modify the activity.

Section IX of the proposed Final Judgment provides that the Court may, after notice and hearing, impose upon the AIA and/or upon its components a civil fine for violating Section III of

the Final Judgment without there having to be any showing of willfulness or intent. Under Section IX, however, such a fine may not be levied on any natural person.

Section X of the proposed Final Judgment provides that, in addition to or in lieu of the civil penalties provided for in Section IX of the Final Judgment, the United States may seek and the Court may impose against defendant or any person any other relief allowed by law for violation of the Final Judgment.

Section XI prohibits the AIA from allowing Thomas J. Eyerman, the President of the Chicago Chapter in 1984, to hold any office, sit on any board of directors, or chair or serve on any committee or subcommittee of defendant or any of its components. Section XI provides, however, that Eyerman is permitted to maintain a general membership in the AIA and participate as a general member.

Section XIV of the proposed Final Judgment provides that the Final Judgment supersedes and terminates the final judgment entered against the defendant in 1972 in United States v. The American Institute of Architects, Civil Action No. 992-72 (D.D.C.).

Section XV of the proposed Final Judgment provides that defendant must pay the United States the costs of the investigation in the amount of \$50,000 in settlement of all claims of the United States against defendant arising from this action.

B. Scope of the Proposed Final Judgment

Section II of the proposed Final Judgment provides that the Final Judgment shall apply to the AIA, to the AIA's state and local organizations and chapters in the United States and territories, to the officers, directors, agents, employees, successors, and assigns of the AIA and its components, and to all other persons in active concert or participation with any of them who shall have received actual notice of the Final Judgment.

Section XIII of the proposed Final Judgment provides that the Final Judgment shall remain in effect for 10 years.

C. Effect of the Proposed Judgment on Competition

The relief in the proposed Final Judgment is designed to ensure that AIA members have the opportunity, using their own independent competitive judgment, to decide unilaterally whether to (1) engage in competitive bidding or to submit price quotations where price is the sole or principal selection criterion, (2) discount fees, or (3) provide free services. It is also designed to ensure that consumers of architectural services have the opportunity to receive such services on the basis of free and open competition between and among AIA members.

Five methods for determining compliance with the terms of the Final Judgment are provided. First, Section VIII requires the Decree Committee to certify to the Department of Justice within 120 days after the Final Judgment is entered whether to

the best of its knowledge and belief the AIA and its components have made the various reviews, corrections, publications, and transmittals that they are required to make under Sections V(A) and (B) and VI(A) and (B) of the Final Judgment. Section VIII also requires the Decree Committee to certify annually to the Department of Justice whether to the best of its knowledge and belief the AIA and its components have made the various transmittals and communications, conducted the various briefing and programs, and received the various certifications and reports required each year by Sections VI(C) and VII of the Final Judgment. Second, Section VIII further requires the AIA to submit a written report to the Department of Justice if an actual or potential violation of the Final Judgment is not cured within forty-five days of a member of the Decree Committee learning of the proposed or actual activity. This report must be submitted within fifteen days after the end of this forty-five day period. It must describe, among other things, the relevant activity and the steps the defendant has taken or plans to take in order to come into compliance with the Final Judgment. Third, if one of these reports is filed, Section XII(B) provides that the defendant will not assert against the Department any claim of privilege with respect to any records or documents maintained by the Decree Committee relating to any activity disclosed in the report. Fourth, Section XII(A) provides that, upon reasonable notice, the

Department of Justice shall be given access to any records of the AIA or any of its components and permitted to interview any officers, employees, or agents of defendant or any of its components. Fifth, Section XII(C) provides that, upon written request, the Department of Justice may require defendant and its components to submit written reports, under oath if asked, about any matters relating to the Final Judgment as may be reasonably requested.

The Department of Justice believes that this proposed Final Judgment contains adequate provisions to prevent further violations of the type upon which the Complaint is based and to remedy the effects of the alleged conspiracy.

IV

REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. Sec. 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 suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. Sec. 16(a), the judgment has no prima facie effect in any subsequent lawsuits that may be brought against AIA or any of its components.

V

PROCEDURES AVAILABLE FOR MODIFICATION
OF THE PROPOSED 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 Robert E. Bloch, Chief, Professions and Intellectual Property Section, Antitrust Division, U.S. Department of Justice, 555 Fourth Street, N.W., Washington, D.C. 20001, 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 Judgment at any time prior to entry. Section XVI of the proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation or enforcement of the Final Judgment.

VI

ALTERNATIVE TO THE PROPOSED FINAL JUDGMENT

The alternative to the proposed Final Judgment would be a full trial of the case. In the view of the Department of Justice, such a trial would involve substantial cost to the

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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CERTIFICATE OF SERVICE

I, Edward D. Eliasberg, Jr., hereby certify that a copy of the Competitive Impact Statement in United States v. The American Institute of Architects was served on the 5th day of July 1990, by hand delivery, to counsel as follows:

Franklin D. Kramer
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