IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. HALLIBURTON COMPANY and DRESSER INDUSTRIES, INC., Defendants.	Case Number: 1: 98-cv-02340 (TPJ)

COMPETITIVE IMPACT STATEMENT

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), 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 September 29, 1998, the United States filed a civil antitrust Complaint alleging that the proposed merger of Dresser Industries, Inc. ("Dresser") and Halliburton Company ("Halliburton") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that Halliburton and Dresser are two of only four companies that provide logging-while-drilling ("LWD") services to oil and gas drilling companies and are the only sources of current and likely future innovations in new and improved LWD tools. The request for relief in the Complaint seeks: (1) a judgment that the proposed merger would violate Section 7 of the Clayton Act; (2) a permanent injunction preventing consummation of the merger agreement; (3)

an award of costs to the plaintiff; and (4) such other relief as the Court may deem just and proper.

When the Complaint was filed, the United States also filed a proposed settlement that would permit the merger of Halliburton and Dresser to proceed, but require a divestiture that will preserve competition in the market for provision of LWD services. This settlement consists of a Stipulation and Order and a proposed Final Judgment. The proposed Final Judgment orders defendants to divest "the LWD business," which is described in Schedule A of the proposed Final Judgment, within one hundred and eighty (180) calendar days after the filing of the Final Judgment in this matter, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later. The purchaser of the LWD Business must be acceptable to the Antitrust Division of the Department of Justice ("DOJ"). The LWD Business includes virtually all of Halliburton's LWD tools; sufficient measurement-while-drilling ("MWD") tools for use with the LWD tools; manufacturing equipment; workshop, testing, and repair equipment used by Halliburton to conduct the LWD Business anywhere in the world; research and development equipment; Halliburton's Lafayette, Louisiana, facility and the option to acquire facilities outside the United States previously used by Halliburton or Dresser to provide LWD services that will not continue to be used by Halliburton; the right to hire employees of the LWD Business as the purchaser requires to operate the LWD business, including a reasonable number of employees to manage the manufacture, assembly, testing or calibration of LWD tools and associated MWD tools and to conduct LWD research and development; and worldwide, royalty-free, irrevocable licenses to the intellectual property used in connection with the use, manufacture, or sale of the transferred tools.

The plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Defendants and the Proposed Transaction

Halliburton is a Delaware corporation, with its principal office in Dallas, Texas. It provides products and services for the exploration, development, and production of oil and natural gas. It is one of the "Big Four" oil field service companies -- along with Dresser and two other companies. In 1997, Halliburton had revenues of over $8 billion. Dresser is also a Delaware corporation headquartered in Dallas, Texas. In 1997, it reported total sales of about $7.5 billion.

On February 25, 1998, Halliburton and Dresser entered into an Agreement and Plan of Merger under which Halliburton would merge with Dresser. This transaction, which would increase concentration in the already highly concentrated market for the provision of LWD services, precipitated the government's suit.

B. The LWD Service Market

Oil and gas companies use data from LWD tools, which are placed behind the drill bit, to guide drilling operations, particularly in offshore drilling projects. The data from LWD tools, which is transmitted to the surface while the drilling is ongoing, allows the driller to evaluate the formation that the drill bit is cutting. With this data, the driller can detect changes in downhole

pressure, prevent the drill bit from straying out of oil or gas deposits, and otherwise determine the optimum drilling path.

There are four types of LWD tools, each of which provides different data to evaluate the formation: (1) gamma ray, (2) resistivity, (3) neutron density, and (4) sonic. Gamma ray tools, which are the most rudimentary LWD tools, identify the type of formation (e.g., shale or sand) by measuring natural radioactivity. Data from LWD resistivity tools help detect the presence of oil, gas, and water in the formation. Data from LWD neutron density and sonic tools help determine the formation's porosity, which indicates the amount of liquid in the formation and the formation's permeability.

There are no realistic substitutes for LWD services for offshore drilling projects. Drillers can use wireline logging tools to gather similar data, but, in order to use wireline logging, they must cease drilling, remove the drill from the well, lower tools into the well by wire, collect data downhole, remove the tools, and read the data on the surface. During this entire operation, which may take as long as a day and a half, the drilling rig sits idle (costing the operator $250,000 to $300,000 per day in deepwater areas of the Gulf of Mexico), which makes wireline logging much more expensive than LWD services. A small but significant and nontransitory increase in the price of LWD services would not cause a significant number of customers drilling offshore wells to switch to wireline services, or to any other method for obtaining formation evaluation data.

C. Harm to Competition as a Consequence of the Merger

Halliburton and Dresser are two of only four firms that provide the full range of LWD services. The proposed transaction would reduce to three the number of firms providing the full range of LWD services in the United States.

Moreover, successful entry into the market for provision of LWD services would be difficult, time-consuming, and costly. Even if a new entrant invested in the research, development, and engineering programs required to produce the current generation of LWD tools, it would also have to engage in extensive testing, and, over a course of years, eventually establish a reputation for quality and reliability -- particularly for customers drilling offshore for whom the costs of delay due to failure of LWD tools can be great.

Halliburton and Dresser are also two of only four firms that are engaged in the research, development, and commercialization of new LWD tools. Competition between these firms to develop new and better LWD tools is important to oil and gas companies, in order to minimize the per-barrel cost of producing oil and gas. This competition has hastened the pace of innovation and given customers a variety of solutions to their formation evaluation needs.

The Complaint alleges that the transaction would have the following effects, among others:

a. actual and potential competition between Halliburton and Dresser will be eliminated;

b. competition generally in the provision of LWD services will likely be substantially lessened;

c. prices for LWD services will likely increase; and

d. competition in the development, commercialization, and improvement of LWD tools will likely be substantially lessened.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The provisions of the proposed Final Judgment are designed to eliminate the anticompetitive effects of the proposed merger of Halliburton and Dresser.

The proposed Final Judgment provides that, within one hundred and eighty (180) calendar days after the filing of the Final Judgment in this matter, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, defendants must divest the LWD Business to an acquirer acceptable to DOJ. If defendants fail to divest the LWD Business within this period, a trustee, selected by DOJ, will be appointed by the Court to sell the LWD Business.

The Final Judgment provides that defendants will pay all costs and expenses of the trustee. After the trustee's appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the parties will have the opportunity to make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust and the term of the trustee's appointment.

Section IV of the proposed Final Judgment requires defendants to divest "the LWD Business" as an ongoing business to a purchaser acceptable to the United States in its sole discretion. "The LWD Business" is defined as Halliburton Energy Services, Inc.'s ("HESI")

worldwide business providing LWD Services and includes the tangible and intangible assets**,** obligations**,** and understandings set forth in Schedule A of the proposed Final Judgment.[1/]

The assets to be divested include:

(1) HESI's resistivity tools, density-neutron tools, and slim resistivity tools;

(2) half of Halliburton's sonic tools and sonic workstations;

(3) enough MWD tools to allow the purchaser to operate these LWD tools;

(4) software required to operate the tools, information about tool performance history, and spare parts;

(5) a building from which Halliburton currently supplies LWD services to U.S. offshore drilling projects;

(6) equipment necessary to allow the buyer of the LWD Business to manufacture, assemble, test, and calibrate LWD and MWD tools;[2/]

(7) worldwide, royalty-free, irrevocable, non-exclusive licences to use HESI-owned intellectual property, and sublicenses covering the use of third-party technology and related software embodied in the transferred LWD and MWD tools and software, to the extent permitted by HESI's licenses from such third parties;

(8) research and development equipment and development and laboratory records related to the LWD tools and MWD tools to be sold, including the results of unsuccessful designs;

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[1] HESI is a wholly owned subsidiary of Halliburton. "LWD Services" means the services and products used to provide real-time logging-while-drilling formation evaluation data which is utilized to evaluate the formation characteristics of a given geologic formation. LWD Services also include MWD Services provided in conjunction with LWD Services. MWD tools are used when drilling non-vertical wells to measure and transmit data from downhole during the drilling process on the inclination and azimuth of the downhole drilling tools. When LWD tools are used, the driller also uses MWD tools, and the driller usually obtains both types of tools from the same company because the MWD tools and LWD tools must be compatible.

[2] Excluded from the divestiture package is HESI's test well. The purchaser will be able, for a fee, to use HESI's test well at Fort Worth, Texas, for two years.

(9) all assignable contracts to provide LWD services worldwide, as well as lists of customers, customer credit records, and supplier/vendor lists and supplier/vendor contracts; and

(10) the opportunity to hire Halliburton employees to operate the LWD Business, including employees in manufacturing, research and development, and technical support and training services.

After the sale of the LWD Business, defendants will not be able to offer LWD services using any of the tools of the type sold with the LWD Business, except for (i) LWD services necessary to complete existing contracts for which Halliburton will rent the tools from the purchaser; (ii) LWD services using LWD tools acquired from Dresser; and (iii) sonic LWD services using sonic LWD tools of the type sold to purchaser.

Although the Complaint alleges the United States as the relevant geographic market, the proposed Final Judgment requires divestiture of the assets that Halliburton has used to provide LWD Services worldwide. Divestiture of the worldwide LWD business is necessary to preserve competition in the United States LWD services market because Halliburton, Dresser, and the other two major providers of LWD Services have worldwide operations that provide them a revenue base to support LWD research and development efforts. Thus, the divestiture is designed to ensure that the new buyer is viable and to put the purchaser in Halliburton's place as an international LWD company, enabling the purchaser to continue the innovation of LWD tools, which will benefit U.S. customers.

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 the person has suffered, as well as costs and reasonable

attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. 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. The comments and the response of the United States will be filed with the Court and published in the Federal Register. Written comments should be submitted to:

Roger W. Fones
Chief, Transportation, Energy & Agriculture Section
Antitrust Division
United States Department of Justice
325 Seventh Street, N.W., Suite 500
Washington, DC 20530.

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. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Halliburton and Dresser. The United States is satisfied that the divestiture of the described assets specified in the proposed Final Judgment will facilitate continued viable competition in the market for the provision of LWD services. The United States is satisfied that the proposed relief will prevent the merger from having anticompetitive effects in this market. The divestiture of the LWD Business will preserve the structure of the market for the provision of LWD services that existed prior to the merger and will preserve the existence of an independent competitor.

VII. STANDARD OF REVIEW UNDER THE APPA FOR PROPOSED FINAL JUDGMENT

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider --

> (1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e). As the Court of Appeals for the District of Columbia Circuit held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See United States v. Microsoft, 56 F.3d 1448 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[3/] Rather,

> absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. Mid-America Dairymen, Inc., 1977-1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." United States v. BNS, Inc., 858 F.2d 456, 462 (9th Cir. 1988), quoting United States v. Bechtel Corp., 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981). Precedent requires that

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[3] 119 Cong. Rec. 24598 (1973). See also United States v. Gillette Co., 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. 93-1463, 93rd Cong. 2d Sess. 8-9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is 'within the reaches of the public interest.' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[4/]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted)."[5/]

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

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[4] United States v. Bechtel, 648 F.2d at 666 (internal citations omitted) (emphasis added); see United States v. BNS, Inc., 858 F.2d at 463; United States v. National Broadcasting Co., 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); Gillette, 406 F. Supp. at 716. See also United States v. American Cyanamid Co., 719 F.2d 558, 565 (2d Cir. 1983).

[5] United States v. American Tel. & Tel. Co., 552 F. Supp. 131, 150 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983), quoting Gillette, 406 F. Supp. at 716; United States v. Alcan Aluminium, Ltd., 605 F. Supp. 619, 622 (W.D. Ky. 1985).

FOR PLAINTIFF UNITED STATES OF AMERICA:

Dated: October 21, 1998

Respectfully submitted,

_____/s/_____
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