

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
T.I.M.E.-DC., INC.,)
)
Defendant.)

Civil Action No. 5-1063

Filed: June 30, 1972

Entered: July 31, 1972

FINAL JUDGMENT

Plaintiff, United States of America having filed its Complaint herein on **June 30, 1972** and plaintiff and defendant, by their respective attorneys having consented to the entry of this Final Judgment, without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting evidence or admission by any party with respect to any such issue of fact or law herein;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter herein and of the parties consenting hereto. The Complaint states claims upon which relief may be granted against the defendant under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

For purposes of this Final Judgment:

(A) "Person" means any individual, corporation, partnership, association, firm or other business or legal entity;

(B) "Purchasing decision" shall include any decision, at any stage in the purchasing process, as to the selection of suppliers, the allocation of purchases among suppliers, the placing of any firm on a bidders list, the designation of any firm as a qualified bidder, the selection of a winning bidder, or the continuance, discontinuance, increase or decrease of purchases from any supplier;

(C) "Supplier" includes, but is not limited to, both actual and potential suppliers of any goods, commodities or services; lessors as well as sellers; contractors; in-plant cafeteria and vending operators; banks; insurance companies; and transportation companies. The term shall also include suppliers of suppliers;

(D) "Customer" includes but is not limited to, both actual and potential customers for any goods, commodities or services; lessees as well as purchasers; contractors; in-plant cafeteria and vending operators; banks; insurance companies; and transportation companies. The term shall also include customers of customers;

(E) The terms "purchase" and "sale" include but are not limited to, both actual and potential purchases or sales, increases in purchases or sales and potential increases in purchases or sales. The terms "purchase" and "sale" shall also include the purchase or sale of transportation service or

any arrangement covering the use of any transportation company's services. The terms "purchase" and "sale" cover both products and services and any combination thereof, including construction and engineering service, and any transfer of any property interest including but not limited to leaseholds, bank deposits, and arrangements for in-plant feeding or vending service.

III

The provisions of this Final Judgment shall apply to defendant and its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. This Final Judgment shall not apply to any acts or transactions outside the United States which do not substantially affect the interstate or foreign commerce of the United States.

IV

Defendant is hereby enjoined and restrained from:

(A) Using or attempting to use its purchases to aid, influence or promote its sales to suppliers;

(B) Using purchases to promote sales to suppliers of suppliers or to any person in a series of suppliers of suppliers;

(C) Purchasing or selling products, goods or services on the condition or understanding that purchases by the defendant from any supplier will be based or conditioned upon defendant's sales to such supplier;

(D) Communicating to any person:

(1) that defendant will consider its sales to any customer or supplier as a factor

in any purchasing decision;

- (2) that any supplier or customer should consider defendant's purchases from it as a factor in any purchasing decision;

(E) Establishing or maintaining any trade relations office or position; and from assigning to, or permitting any employee to have any trade relations duties or activities; ("trade relations" means either or both of 1) the use of purchases to aid, influence, or promote sales to suppliers; and 2) the consideration of sales to suppliers as a factor in purchasing decisions.);

(F) Preparing or keeping statistical compilations for any supplier or any class or grouping of suppliers which compare purchases from such suppliers with sales by defendant to such supplier or suppliers;

(G) Giving or showing any report of defendant's purchases, or information extracted therefrom, to any sales personnel, providing sales personnel with information as to the dollar amount of purchases from any supplier, providing sales personnel with an identification of any of defendant's suppliers, or permitting sales personnel to have or to seek purchase information;

(H) Giving or showing to any purchasing agent any customer list or sales report which identifies defendant's customers, providing purchasing personnel with information as to the dollar amount of defendant's sales to any customer, providing purchasing personnel with an identification of any of defendant's customers or permitting purchasing personnel to have or to seek sales information;

(I) Holding any meeting for the purpose of discussing either purchases or sales at which both purchasing and sales personnel of the defendant and any representative of a

customer or supplier are present, or using purchasing personnel to introduce suppliers to sales personnel, or using sales personnel to introduce customers to purchasing personnel; and

(J) Belonging to or permitting its officers or employees to belong to or participate in the activities of, or contribute anything of value to the Trade Relations Association, Inc. or to any association or group whose activity, program or objectives are to promote trade relations.

V

Defendant is ordered and directed to:

(A) Issue, by its president in a form satisfactory to plaintiff, within sixty (60) days after the entry of this Final Judgment to each of its officers and employees having sales or purchasing responsibilities and adopt, maintain and enforce as its own corporate policy a memorandum instructing officers and employees that:

- (1) all officers and employees with purchasing responsibilities are required to adhere to the policy that, consistent with the over-all objective of maintaining adequate and reliable sources of supply, all purchasing decisions must be based upon considerations of price, quality, service, safety and financial responsibility and no purchasing decision inconsistent with such policy will be excused because consideration or recognition was given to the fact that a particular supplier buys or uses, or does not buy or use, to any degree, the products or services made or sold by the defendant, or by any customer or potential customer of the defendant; and a decision to place any firm on any bidding list or to designate any firm as a qualified bidder shall be considered as a purchasing decision;
- (2) all officers and employees are prohibited from influencing, requesting or suggesting to any officer or employee with purchasing re-

sponsibilities to make any exception to the foregoing policy on the basis of any firm's purchase or use, or failure to purchase or use, products or services made or sold by the defendant, or by any customer or potential customer of the defendant;

- (3) all directors, officers, and employees are prohibited from communicating to any supplier that the defendant unilaterally made a decision to purchase from such supplier even though the offer of a competing supplier was of equal or greater value with respect to price, quality, service, safety and financial responsibility.

(B) Remove from the responsibilities of the person who occupied the position of Manager of National Accounts during the year 1971 all National Accounts who are manufacturers of trucks, trailers, automotive components, tires, and business forms and all petroleum refiners, and prohibit such employee from making sales calls upon any such firm for a period of two (2) years from the date of the entry of this Final Judgment;

(C) For a period of two years from the date of entry of this Final Judgment invite competitive bids for each contract to purchase:

- (1) trucks, tractors or trailers of a value in excess of \$150,000;
- (2) tires of a value in excess of \$100,000;
- (3) truck, tractor or trailer components of a value in excess of \$100,000;
- (4) petroleum products of a value in excess of \$50,000;
- (5) new or revised business forms of a value in excess of \$50,000;

from each person who requests in writing to be placed on the bidders list for such products and who is qualified to supply such products under the considerations set forth in Paragraph V(A), above.

(D) Take all necessary and appropriate actions to inform its present and future officers and its present and future employees having managerial, purchasing or sales responsibilities or responsibility for data processing, data collecting or analyzing purchase or sales information of the provisions and requirements of this Final Judgment, and to enforce compliance therewith; and defendant shall furnish within thirty (30) days of the entry hereof a copy of this Final Judgment to each officer and to each employee having managerial, purchasing or sales responsibilities, or responsibility for data processing, data collecting or analyzing purchase or sales information, together with a written notice, signed by its chief executive officer, in a form satisfactory to plaintiff; and thereafter defendant shall immediately furnish a copy of this Final Judgment and such notice to each person who becomes such an officer or employee at any time;

(E) Furnish a copy of this Final Judgment within sixty (60) days after the entry of this Final Judgment to each supplier from whom defendant has purchased or to whom defendant has sold more than \$50,000 of products, goods, or services during any of defendant's fiscal years 1969 through 1971 and to each person who has in the twelve months prior to the date of entry of this Final Judgment requested, in writing, that it be placed on defendant's bidders list. The copy of the Final Judgment shall be accompanied with a written notice satisfactory to the plaintiff which notice shall call attention to the opportunity to be placed on bidders lists under V(C) above, and

(F) File with the plaintiff, on each anniversary date of this Final Judgment, a report setting forth the steps which it has taken during the prior year to comply with this Final Judgment, to advise the defendant's officers, directors and employees of its and their obligations under this Final Judgment, and to enforce their compliance therewith.

VI'

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose; and subject to any legally recognized privilege:

(A) Any duly authorized representative or representatives of the Department of Justice shall, upon written request by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant, made to its principal office, be permitted;

(1) access during the office hours of defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession, custody or under the control of defendant relating to any matters contained in this Final Judgment; and

(2) subject to the reasonable convenience of defendant and without restraint or interference from it, to interview officers or employees of defendant, who may have counsel present, regarding any such matters.

(B) Upon such written request of the Attorney

General or the Assistant Attorney General in charge of the Antitrust Division, defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as from time to time may be requested.

No information obtained by the means provided for in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States except in the course of legal proceedings to which plaintiff is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VII

Jurisdiction is retained for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions contained herein, for the enforcement of compliance therewith, and the punishment of the violation of any of the provisions contained herein.

VIII

This Final Judgment shall terminate and cease to be effective fifteen (15) years from the date of entry of this Final Judgment.

Dated: July 31 , 1972

/s/ HALBERT O. WOODWARD
United States District Judge