

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

JAN 13 1992

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UNITED STATES OF AMERICA,
 Plaintiff,
 v.
TIDEWATER, INC., and
ZAPATA GULF MARINE CORPORATION
 Defendants.

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COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. §§ 16(b)-(h), the United States of America files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of Tidewater, Inc. and Zapata Gulf Marine Corporation in this civil antitrust proceeding.

I.

NATURE AND PURPOSE OF THE PROCEEDING

On January 13, 1992, the United States filed a Complaint alleging that the proposed acquisition of Zapata Gulf Marine Corporation (hereafter "Zapata Gulf") by Tidewater, Inc.

(hereafter "Tidewater") would violate Section 7 of the Clayton Act (15 U.S.C. § 18). The Complaint alleges that the effect of the merger may be substantially to lessen competition in the Gulf anchor-handling market, defined as the provision of anchor-handling services for semi-submersible drilling rigs in the United States Gulf of Mexico ("Gulf").

Anchor-handling/towing supply ("AHTS") vessels of at least approximately 6,000 brake horsepower are required to provide the relevant service. AHTS vessels must be Jones Act-qualified to provide anchor-handling services in the Gulf, and Zapata Gulf and Tidewater are the two largest operators of Jones Act-qualified AHTS vessels of at least 6,000 brake horsepower. Both companies provide anchor-handling services to semi-submersible drilling rigs with AHTS vessels in the Gulf. Anchor-handling and other offshore marine services are purchased by oil companies in connection with the offshore exploration for crude oil and natural gas in the Gulf.

On January 13, 1992, the United States and defendants also filed a Stipulation by which they consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of the merger. Under the proposed Final Judgment, as explained more fully below, Tidewater would be required to sell, by August 10, 1992, certain AHTS vessels. If it should fail to do so, a trustee appointed by the Court would be empowered to sell these vessels.

The United States, Tidewater, and Zapata Gulf have agreed that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify and enforce the Final Judgment, and to punish violations of the Final Judgment.

II.

EVENTS GIVING RISE TO THE ALLEGED VIOLATION

On June 19, 1991, Tidewater and Zapata Gulf entered into a merger agreement under which Tidewater would exchange approximately \$310 million worth of its stock for all of the stock of Zapata Gulf. In addition, Tidewater agreed to assume approximately \$90 million in Zapata Gulf debt.

One of Tidewater's major divisions, Tidewater Marine, provides support services to the domestic and foreign offshore petroleum industry through a fleet of marine vessels. As of June 30, 1991, Tidewater's fleet consisted of 238 U.S. flagged and 69 foreign flagged vessels. In its fiscal year 1990, Tidewater derived approximately \$151 million in worldwide revenues from its marine operations.

Zapata Gulf operates a U.S. and foreign-flagged marine service fleet consisting of about 270 vessels. Of the vessels that are wholly-owned or leased by Zapata Gulf, 146 vessels are U.S. flagged and 103 are foreign flagged. In its fiscal year

ended September 30, 1990, Zapata Gulf derived approximately \$195 million in worldwide revenues from its marine operations.

Tidewater and Zapata Gulf provide offshore marine service vessels, including AHTS vessels, to operators of semi-submersible drilling rigs. Semi-submersible rigs are used to explore for natural gas and oil in the Gulf. These rigs are moored by a system of eight anchors, each of which is attached to the rig by chain, cable, and wire. When the rig is moved to a new drilling location, the mooring system is handled by an AHTS vessel. AHTS vessels are generally between 185 and 225 feet in length and 40 to 50 feet in width, and are fitted with high powered engines, winches and other anchor-handling equipment. They are specially designed, built, and equipped to provide anchor-handling services for semi-submersible drilling rigs. An anchor can weigh as much as 40,000 pounds, and the added weight of the chain, cable, and wire dragging along the ocean floor can require an AHTS vessel to handle several hundred thousand pounds.

Two AHTS vessels are almost always used to provide anchor-handling services to a semi-submersible drilling rig when it is moved. Once the rig has been moved to its new drilling location, one AHTS vessel often remains on charter while the rig is in operation to reset an anchor if one becomes dislodged, to be available when the rig is ready to be moved at the completion of the drilling operation, and to ferry supplies

to the rig. These supplies include liquid drilling "mud", which is carried in the vessel's below-deck storage tanks. The vessel that remains with the rig during the drilling operation is hired at a charter rate that ranges between \$3,400 and \$8,000 per day, depending on the size of the vessel. The second vessel used to assist on the move of the rig may be hired on a spot basis at a rate approximately twice the charter rate.

AHTS vessels vary in their ability to handle the mooring systems of various sizes of semi-submersible drilling rigs and to do so in various water depths and sea conditions, depending predominantly on the brake horsepower ("BHP") of the AHTS vessel. AHTS vessels of at least approximately 6,000 BHP (5,600 BHP-6,140 BHP) generally are required to provide anchor-handling services for semi-submersible drilling rigs in water depths between 500 and 2,000 feet in the Gulf, which is where most semi-submersible drilling rigs operate in the Gulf. There is no substitute for these AHTS vessels to which lessees and operators of semi-submersible rigs in the Gulf would turn to obtain anchor-handling services in the event of a small but significant and nontransitory price increase.

AHTS vessels that are used to provide anchor-handling services for semi-submersible drilling rigs in the Gulf must be Jones Act-qualified, that is, eligible to operate in the unrestricted U.S. coastwise trade under the Merchant Marine Act

of 1920, 46 U.S.C. §883. About 36 percent of the Jones Act-qualified fleet of AHTS vessels of at least approximately 6,000 BHP currently are operating in the Gulf, with little idle capacity. The remainder are deployed outside the Gulf. Tidewater and Zapata Gulf own the two largest fleets of such vessels. Together they account for about 61 percent of the total 42 vessel fleet, and about 85 percent of the fleet deployed outside of the Gulf.

The Complaint alleges that the provision of anchor-handling services for semi-submersible drilling rigs by AHTS vessels of at least approximately 6,000 BHP is a relevant product market for antitrust purposes. The Complaint further alleges that the United States Gulf of Mexico is a relevant geographic market within the meaning of Section 7 of the Clayton Act. The Complaint refers to the relevant market as the "Gulf anchor-handling market."

Tidewater and Zapata Gulf are direct competitors in the Gulf anchor-handling market. They are two of only six firms capable of providing anchor-handling services in this market. Based upon the 15 AHTS vessels of at least approximately 6,000 BHP competing in the Gulf, Tidewater and Zapata Gulf have 13 and 7 percent, respectively, of capacity.

The Gulf anchor-handling market is highly concentrated and would become substantially more concentrated as a result of the proposed transaction. Market concentration is measured by the

Herfindahl-Hirschman Index ("HHI"). The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. The HHI, which takes into account the relative size and distribution of the firms in the market, ranges from virtually zero to 10,000. The HHI approaches zero when a market is occupied by a large number of firms of relatively equal size. The HHI increases as the number of firms in the market decreases and as the disparity in size between the leading firms and the remaining firms increases. A market with a post-acquisition HHI of 1000 is moderately concentrated, and a market with a post-acquisition HHI of 1800 is highly concentrated.

The HHI for the Gulf anchor-handling market, based on capacity, is 2,892. Following the proposed transaction, the HHI would rise to 3,070 - an increase of 178. The combination of Tidewater and Zapata may increase the likelihood of coordinated anticompetitive conduct in the Gulf anchor-handling market. There is insufficient excess capacity among AHTS vessels in the Gulf to mitigate this risk of anticompetitive conduct.

Successful new entry into the Gulf anchor-handling market would not be induced by a small but significant nontransitory price increase. Neither are a sufficient number of the AHTS vessels deployed outside the Gulf likely to return to the Gulf in response to a small but significant nontransitory price increase.

III.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States brought this action because the effect of the proposed acquisition of Zapata Gulf by Tidewater may be substantially to lessen competition, in violation of Section 7 of the Clayton Act, in the Gulf anchor-handling market. The risk to competition posed by this transaction, however, substantially would be eliminated were sufficient AHTS vessels to be sold to a purchaser or purchasers that could operate them as active, independent and financially viable competitors in the Gulf anchor-handling market. To this end, the provisions of the proposed Final Judgment are designed to accomplish the sale of certain vessels capable of performing services in the market to such a purchaser or purchasers and prevent the anticompetitive effects of the proposed acquisition.

Section IV of the proposed Final Judgment requires defendant Tidewater, by August 10, 1992, to divest two AHTS vessels to a purchaser or purchasers that have the capability and present intent to operate the vessels as part of a viable, ongoing business capable of providing anchor-handling services in the Gulf. The vessels are the Gulf Fleet 54 and a second vessel to be selected by Tidewater from the following group of AHTS vessels: Darol Tide, Doc Tide, Hatch Tide, Gulf Fleet 55 or Gulf Fleet 59. These vessels, as well as the Gulf Fleet 54, are Jones Act-qualified AHTS vessels of approximately 6,000

BHP. They are the newest Jones Act-qualified AHTS vessels in the Tidewater and Zapata Gulf fleets and are equipped with liquid mud capacity so that they can not only handle the mooring systems of semi-submersible drilling rigs, but also provide supply services to the rigs during the drilling operations. The ability of AHTS vessels to serve these dual functions is an important criterion to Gulf customers in choosing AHTS vessels. Section IV. F. of the proposed Final Judgment bars the divestiture of the vessels to three competitors of Tidewater and Zapata Gulf: Seacor Holdings, Inc., Ensco Marine Company, and Penrod Drilling Corporation.

Under the proposed Final Judgment, defendants must take all reasonable steps necessary to accomplish quickly the divestiture of the specified assets, and shall cooperate with bona fide prospective purchasers by supplying all information relevant to the proposed sale. Should Tidewater fail to complete its divestiture by August 10, 1992, the Court will appoint, pursuant to Section V, a trustee to accomplish the divestiture. The United States will have the discretion to delay the appointment of the trustee for up to an additional two months should it appear that the assets can be sold in the extended time period.

Following the trustee's appointment, only the trustee will have the right to sell the divestiture assets, and defendant Tidewater will be required to pay for all of the trustee's sale-related expenses. If divestiture of the undesignated vessel is not made by Tidewater prior to the appointment of the Trustee, the proposed Final Judgment requires Tidewater to designate the identity of the vessel to be divested in addition to the Gulf Fleet 54 no later than five days prior to the effective date of the trustee's appointment.

Section VI of the proposed Final Judgment would assure the United States an opportunity to review any proposed sale, whether by Tidewater or by the trustee, before it occurs. Under this provision, the United States is entitled to receive complete information regarding any proposed sale or any prospective purchasers prior to consumation. Upon objection by the United States to a sale of the divestiture assets by the defendant Tidewater, a proposed divestiture may not be completed. Should the United States object to a sale of the divested assets by the trustee, such sale shall not be consummated unless approved by the Court.

Pursuant to Section V. G., should the trustee not accomplish the divestiture within six months of appointment, the trustee and the parties will make recommendations to the Court, which shall enter such orders as it deems appropriate to

carry out the purpose of the trust, which may include extending the trust or the term of the trustee's appointment.

Under Section IX of the proposed Final Judgment, defendant Tidewater must take certain steps to ensure that, until the required divestiture has been completed, the pool of divestiture assets, defined as the Gulf Fleet 54 and the five AHTS vessels from which Tidewater will designate a vessel to be divested, will be maintained as distinct salable assets. Until such divestiture, defendant Tidewater must also preserve and maintain the pool of divestiture assets as salable assets, making all reasonable efforts to maintain the vessels in a condition which makes them usable as part of a viable and active business providing anchor-handling services. Tidewater may, by notifying plaintiff, exclude a vessel other than the Gulf Fleet 54 from the pool of divestiture assets. Upon that notification, the requirements of Section IX will no longer apply to that vessel. Once excluded, a vessel may not reenter the pool of divestiture assets.

Section X requires Tidewater to provide certain information about any proposed acquisition of one or more Jones Act-qualified AHTS vessels of at least 5,600 BHP, or of the stock or assets of a company owning such a vessel, if the acquisition is not reportable under the Hart-Scott-Rodino premerger notification law. 15 U.S.C. §18a. This information must be provided at least 30 days prior to the acquisition, and

includes data about the current owner of the vessel, the vessel, and the transaction. Section XIII of the proposed Final Judgment provides that it will expire on the third anniversary of its entry by the Court.

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.

PROCEDURE AVAILABLE FOR COMMENTING ON 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 60 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 60 days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to comments. 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:

Mark C. Schechter, Chief
Transportation, Energy &
Agriculture Section
Antitrust Division
Judiciary Center Building
555 4th Street, N.W., Room 9403
Washington, D.C. 20001

VI.

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment requires that the divestiture assets be sold to a purchaser or purchasers with the capability and present intent of operating them as part of a viable, ongoing business capable of providing anchor-handling services in the Gulf. Thus, compliance with the proposed Final Judgment and the completion of the sale or sales required by the Judgment should resolve the competitive concerns raised by the

proposed transaction, and assure that the divestiture assets would be used as part of a viable and active competitor to Tidewater's provision of anchor-handling services.

Litigation is, of course, always an alternative to a consent decree in a Section 7 case. The United States rejected this alternative because the sale required under the proposed Final Judgment should prevent the acquisition by Tidewater of Zapata Gulf from having a significant anticompetitive effect in the relevant market alleged, the Gulf anchor-handling market.

While the number of AHTS vessels operated in the Gulf by Tidewater and Zapata Gulf has varied over time, since June of 1990 Zapata Gulf has provided anchor-handling services in the Gulf with two AHTS vessels. Thus, by requiring the divestiture of two AHTS vessels, Zapata Gulf will be effectively replaced as a competitor in the Gulf.

The United States is satisfied that the proposed Final Judgment fully resolves the anticompetitive effects of the proposed merger alleged in the Complaint. Although the proposed Final Judgment may not be entered until the criteria established by the APPA (15 U.S.C. §§ 16(b)-(h)) have been satisfied, the public will benefit immediately from the safeguards in the proposed Final Judgment because the defendants have stipulated to comply with the terms of the Judgment pending its entry by the Court.

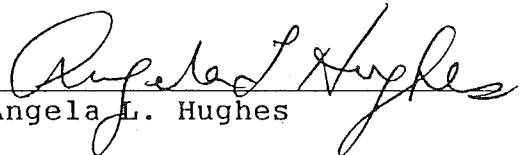
VII.

DETERMINATIVE MATERIALS AND DOCUMENTS

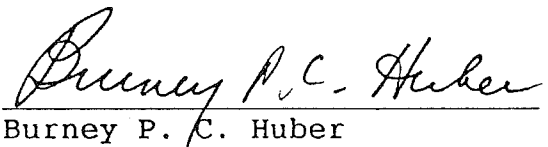
There are no materials or documents that the United States considered to be determinative in formulating this proposed Final Judgment. Accordingly, none are being filed with this Competitive Impact Statement.

Dated: January 13, 1992

Respectfully submitted,


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