

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

BROWN UNIVERSITY IN PROVIDENCE
IN THE STATE OF RHODE ISLAND,
AND PROVIDENCE PLANTATIONS;

THE TRUSTEES OF COLUMBIA
UNIVERSITY IN THE CITY
OF NEW YORK;

CORNELL UNIVERSITY;

THE TRUSTEES OF DARTMOUTH
COLLEGE;

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE, MASSACHUSETTS;

MASSACHUSETTS INSTITUTE OF
TECHNOLOGY;

THE TRUSTEES OF PRINCETON
UNIVERSITY;

THE TRUSTEES OF THE UNIVERSITY
OF PENNSYLVANIA; and

YALE UNIVERSITY,

Defendants.

Civil Action No. 91-CV-3274

COMPETITIVE IMPACT STATEMENT

Filed: May 22, 1991

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 May 22, 1991, the United States filed a civil antitrust complaint alleging that defendants and co-conspirators conspired unreasonably to restrain price competition among themselves in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

The Complaint alleges that beginning at least as early as 1980 and continuing to the date of the Complaint, defendants and co-conspirators conspired to restrain price competition among themselves in the sale of undergraduate education to students receiving financial aid. This conspiracy has been effectuated through the "Overlap" group, which consists of financial aid officers from the defendants' and co-conspirators' colleges and universities. The Overlap group schools have made several agreements restricting the amount of financial aid they award undergraduate students. The conspiracy has had the effect of depriving students receiving financial aid and their families of the benefits of free and open price competition. In addition, the conspiracy has caused some students receiving financial aid and their families to pay more for college than they would have otherwise.

The relief sought in the Complaint is to prevent defendants from continuing or renewing the alleged conspiracy, or from engaging in any other conspiracy or adopting any practice having a similar purpose or effect for a period of 10 years. The Complaint further asks that defendants be required to institute a compliance program to ensure that defendants do not continue or renew the alleged conspiracy or engage in any other conspiracy or practice having a similar purpose or effect.

The defendants will be required to file annual reports with the Court and the Government certifying that they have complied with the terms of Section V of the Final Judgment.

Entry of the proposed Final Judgment will terminate the action against all consenting defendants, 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 defendants, the eight Ivy League colleges and universities and MIT, compete with each other in enrolling highly-selective undergraduate student bodies. The defendants

also compete with each other in providing and selling an undergraduate education.

2. The defendants sell an undergraduate education to students receiving financial aid at a price less than full tuition, room and board. Financial aid recipients receive, in effect, a discount reducing their cost of attendance. This reduced cost is made up of two components, "family contribution" and "self-help." The family contribution is the cash payment that a college determines a student's family will pay from its assets and income. Self-help is the non-grant portion of financial aid and consists of loans and the student's income during the school year from campus employment.

3. All defendants belong to a group of financial aid administrators known as the "Overlap" group. The Overlap group schools hold a series of meetings each year and have made several agreements restricting the financial aid they award undergraduate students. These agreements include:

- (a) an agreement to award all financial aid solely on the basis of family income and assets, which prohibits the Overlap group schools from offering financial aid based on "merit," such as academic achievement, talent or diversity;
- (b) an agreement to use a common formula to determine the family contributions for financial aid applicants;
- (c) an agreement, at an annual spring Overlap meeting, to compare the family contributions for financial aid

applicants admitted to more than one Overlap school, and eliminate significant differences so that the family contributions will be comparable; and

- (d) an agreement to exchange anticipated self-help levels and, at the annual spring meeting, often to match self-help awards for students admitted by more than one Overlap member.

4. The express purpose and effect of these Overlap agreements is to ensure that families of students receiving financial aid will pay approximately the same amount regardless of the Overlap institution the student chooses to attend.

5. As a result of these agreements, students receiving financial aid and their families have been deprived of the benefit of free and open price competition in the sale of an undergraduate education. Students who would have otherwise received merit aid have not, some students who would have qualified for financial aid have received none, and some students receiving financial aid have not received as much as they would have otherwise.

III.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and the consenting defendants 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 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, 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 X of the proposed Final Judgment sets forth such a finding.

The proposed Final Judgment is intended to ensure that the defendants independently decide financial aid policies and independently calculate financial aid awards to individual students. It does not, however, prevent defendants from unilaterally adopting or implementing any financial aid policies, including policies based in whole or in part on the economic need of financial aid applicants. It also does not prohibit defendants from disclosing policies or information to the public or, in certain instances, from communicating publicly-available policies or information. Neither does the proposed Final Judgment prevent defendants that are members of a common athletic league from agreeing with each other to grant financial aid to students participating in athletics solely on the basis of economic need, provided that each school applies its own standard of economic need.

A. Prohibitions and Obligations

The proposed Final Judgment would enjoin the defendants from agreeing with any other college or university on all or any part of financial aid, including the grant or self-help, awarded to any student, or on any student's family contribution. Defendants would also be prohibited from agreeing with any other college or university regarding how family contribution will be calculated. Similarly, defendants would be enjoined from agreeing with any other college or university to apply a similar or common formula to determine the family contributions for financial aid applicants, and from communicating with any college or university concerning how the family contribution will be calculated for a specific financial aid applicant.

The proposed Final Judgment would further enjoin defendants from agreeing with any other college or university whether or not to offer financial aid based on "merit," either as a general policy or to any particular student. Defendants would also be prohibited from communicating with any other college or university about plans or projections regarding "summer savings requirements" (the money students are expected to earn from summer employment to contribute to college expenses) or "self-help" requirements. All communications between defendants and any other college or university regarding the financial aid awarded or proposed to be awarded any financial aid applicant would also be enjoined.

Certain communications regarding other budgetary information would also be prohibited. Specifically, defendants would be prohibited from communicating with any other college or university about plans or projections, including budget assumptions, regarding future student fees (such as tuition, room and board) or faculty salaries. Defendants would also be prevented from entering into any contract, agreement or understanding with any other college or university concerning these matters. Defendants exchanged budgetary information from at least 1980 to 1989.

In addition to these prohibitions, defendants would be obligated to implement an antitrust compliance program. This program would require each defendant to designate an Antitrust Compliance Officer within 30 days of entry of the Final Judgment. The Antitrust Compliance Officer would be responsible for distributing copies of the Final Judgment to all trustees and governing board members and to all non-clerical employees in the offices of the President, Vice Presidents, Provost, Deans, Financial Aid, Admissions, Budget, Controller, and Treasurer who have any responsibility for recommending or setting fees, salaries or financial aid. These persons would be required annually to certify that they understand and agree to abide by the terms of the Final Judgment.

All persons to whom the Final Judgment is distributed would be obligated to report any violations of the Judgment to the

Antitrust Compliance Officer promptly. The defendants must, within 45 days after the Antitrust Compliance Officer learns of any such violations, take appropriate action to terminate or modify the activity so as to comply with the Final Judgment.

B. Scope of the Proposed Final Judgment

The proposed Final Judgment would apply to each defendant and to each of their officers, trustees, and other members of their governing boards, employees, agents, successors, and assigns, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

The proposed Final Judgment would remain in effect for 10 years.

C. Effect of the Proposed Final Judgment on Competition

The relief in the proposed Final Judgment is designed to ensure that the defendants' financial aid decisions, both with respect to general policies and the amount of financial aid awarded individual students, are made independently. The prohibitions against exchanges of and communications about financial aid data and other budgetary information are designed to prevent restraints on price competition among the defendants. The proposed Final Judgment is also designed to ensure that consumers of higher education reap the benefits of free and open price competition.

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. § 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. § 16(a), the Judgment has no prima facie effect in any subsequent lawsuits that may be brought against defendants in this matter.

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, U.S. Department of Justice, Antitrust Division, 555 Fourth Street, N.W., Room

9903, Judiciary Center Building, 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. 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 against all of the defendants. In the view of the Department of Justice, such a trial would involve substantial cost to the United States and is not warranted because the proposed Final Judgment provides all the relief that the United States sought in its Complaint.

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.

DATED: May 22, 1991

Respectfully submitted,



JAMES F. RILL
Assistant Attorney General



D. BRUCE PEARSON



JOSEPH H. WIDMAR



JON B. JACOBS



ROBERT E. BLOCH



JESSICA N. COHEN

Attorneys
U.S. Department of Justice



PATRICIA A. BRINK

MICHAEL M. BAYLSON
United States Attorney
Eastern District of Pennsylvania

Attorneys
U.S. Department of Justice
Antitrust Division
555 4th Street, N.W.
Room 9840
Washington, D. C. 20001
202/307-1028

CERTIFICATE OF SERVICE

I, Jessica N. Cohen, hereby certify that a copy of the **Competitive Impact Statement** was served on May 22, 1991 by first class mail, postage prepaid, on the following:

Joel Davidow, Esquire
Dickstein, Shapiro & Morin
2101 L Street, N.W.
Washington, D. C. 20037
COUNSEL FOR BROWN UNIVERSITY

Stanley D. Robinson, Esquire
Kaye, Scholer, Fierman,
Hays & Handler
425 Park Avenue
New York, New York 10022
**COUNSEL FOR THE TRUSTEES OF
COLUMBIA UNIVERSITY**

Thomas B. Leary, Esquire
Hogan & Hartson
555 Thirteenth Street, N.W.
8 West 312
Washington, D. C. 20004
COUNSEL FOR CORNELL UNIVERSITY

Bruce D. Sokler, Esquire
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
1825 Eye Street, N.W.
Washington, D. C. 20006
**COUNSEL FOR THE TRUSTEES OF
DARTMOUTH COLLEGE**

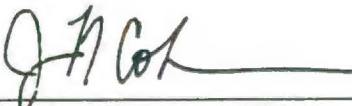
Daniel Mayers, Esquire
Wilmer, Cutler, Pickering
2445 M Street, N.W.
Washington, D. C. 20037-1420
**COUNSEL FOR PRESIDENT AND
FELLOWS OF HARVARD COLLEGE,
MASSACHUSETTS**

Thane D. Scott, Esquire
Palmer & Dodge
One Beacon Street
Boston, Mass. 02108
**COUNSEL FOR MASSACHUSETTS
INSTITUTE OF TECHNOLOGY**

Ronald G. Carr, Esquire
Morrison & Foerster
2000 Pennsylvania Avenue, N.W.
Suite 5500
Washington, D. C. 20008-4812
**COUNSEL FOR THE TRUSTEES OF
PRINCETON UNIVERSITY**

Roger Fendrich, Esquire
Arnold & Porter
1200 New Hampshire Ave., N.W.
Washington, D. C. 20036
COUNSEL FOR YALE UNIVERSITY

Arthur Makadon, Esquire
Ballard, Spahr, Andrews & Ingersoll
30 South 17th Street; 20th Floor
Philadelphia, Pa. 19103
**COUNSEL FOR THE TRUSTEES
OF THE UNIVERSITY OF PENNSYLVANIA**



JESSICA N. COHEN