

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Civil No. 84-0496 KN (Mcx)
)	
Plaintiff,)	Filed: May 22, 1984
)	
v.)	Entered:
)	
ASSOCIATION OF ENGINEERING)	
GEOLOGISTS,)	
)	
Defendant.)	

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 January 24, 1984, the United States filed a civil antitrust Complaint alleging that the Association of Engineering Geologists ("AEG") conspired with its members to restrain competition among engineering geologists by unreasonably

1 restricting advertising, price competition, and solicitation in
2 violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

3 The Complaint alleged that, beginning at least as early as
4 1976, and continuing up to and including the date when the
5 Complaint was filed, AEG and its co-conspirators violated the
6 Sherman Act by adopting ethical rules prohibiting commercial
7 advertising; requiring that members charge only those fees for
8 engineering geology services which are customary in their
9 respective areas; prohibiting the submission of price proposals
10 where price is the overriding or primary consideration in the
11 award of the work; prohibiting members from reducing charges after
12 being informed of proposals of other engineering geologists; and
13 prohibiting solicitation of engineering geology engagements. The
14 Complaint further charged that the members of AEG agreed to abide
15 by these rules and that members of AEG who violated these rules
16 were subject to suspension or expulsion. The effects of the
17 conspiracy have been to unreasonably restrict advertising, price
18 competition, and solicitation in the sale of engineering geology
19 services and to deprive consumers of engineering geology services
20 the benefits of free and open competition in the sale of such
21 services.

22 The relief sought in the Complaint was that AEG be required
23 to cancel any provisions of its Code of Ethics and every other
24 resolution or statement of policy which has the purpose or effect
25 of unreasonably restricting advertising, price competition, or
26 solicitation by members of AEG. The Complaint further asked that
27 AEG be enjoined from adopting or following any similar program.
28

1 that time, defendant adopted the Articles that are part of its
2 current Code of Ethics. In 1978, AEG adopted Guidelines to these
3 Articles. AEG's Code of Ethics, including both Articles and
4 Guidelines, restricts advertising, price competition, and
5 solicitation by requiring that all members adhere to provisions
6 which explicitly state that the engineering geologist:

7
8 (a) shall not use any commercial advertising;

9
10 (b) shall charge "customary" fees and shall not make price
11 the "overriding" or "primary" consideration; and

12
13 (c) shall not, where negotiations proceed on the basis of
14 prequalification, solicit engineering geology
15 engagements after being advised that "another
16 engineering geologist has been selected," is "under
17 contract for the same work," or has made a "study and
18 report on a specific project."

19
20 4. This conspiracy deprived consumers of engineering
21 geology services of the benefits of free and open competition in
22 the sale of such services and prevented members of AEG from making
23 their services readily known to consumers and available on such
24 terms and conditions that reflect the unilateral competitive
25 judgment of members.
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and AEG 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 XIV of the proposed Final Judgment sets forth such a finding.

The proposed Final Judgment is intended to ensure that AEG and its sections completely eliminate all formal or informal rules or ethical codes which prohibit commercial advertising, price competition, or solicitation in the sale of engineering geology services and that members of AEG and purchasers of engineering geology services are made aware that such forms of competition are permissible.

A. Prohibitions and Obligations

Under Section IV of the proposed Final Judgment, AEG is enjoined from (1) continuing, initiating, or furthering any plan, program, or course of action which has the purpose or effect of suppressing or discouraging commercial advertising, price competition, or solicitation in the sale of engineering geology

1 services; and (2) adopting or seeking adherence to any code of
2 ethics or collective statement which has the purpose or effect of
3 suppressing or discouraging commercial advertising, price
4 competition, or solicitation in the sale of engineering geology
5 services, or which states or implies that such advertising, price
6 competition, or solicitation is unethical, unprofessional, or
7 contrary to any policy of AEG.

8 Section V of the proposed Final Judgment requires AEG to
9 cancel various Articles and Guidelines to its Code of Ethics which
10 prohibit commercial advertising, price competition, or
11 solicitation in the sale of engineering geology services and to
12 eliminate every other statement, resolution, rule, or by-law which
13 has the purpose or effect of suppressing or discouraging
14 commercial advertising, price competition, or solicitation in the
15 sale of engineering geology services, or which states or implies
16 that such advertising, price competition, or solicitation is
17 unethical, unprofessional, or contrary to any policy of defendant.

18 Section VI of the proposed Final Judgment requires AEG to (1)
19 send to each of its members a copy of the proposed Final Judgment
20 and an accompanying letter which explains said Judgment; (2)
21 attach to each copy of its current Code of Ethics and Professional
22 Practice Guidelines a statement that nothing in said Code or
23 Guidelines prohibits commercial advertising, price competition, or
24 solicitation in the sale of engineering geology services, and that
25 such advertising, price competition, or solicitation is not
26 unethical, unprofessional, or contrary to any policy of AEG; and
27
28

1 (3) publish in The Professional Engineer and The Professional
2 Geologist a notice explaining the Final Judgment to the public.

3 Section VII of the proposed Final Judgment requires AEG to
4 certify annually for a period of ten years that it does not have
5 in effect any plan or course of action which suppresses commercial
6 advertising, price competition, or solicitation in the sale of
7 engineering geology services.

8 Section VIII of the proposed Final Judgment requires AEG to
9 (1) send a copy of the Final Judgment to each new member; and (2)
10 state in any subsequent edition of its Code of Ethics or
11 Professional Practice Guidelines that commercial advertising,
12 price competition, or solicitation are neither prohibited by the
13 Code or Guidelines nor contrary to any policy of AEG.

14 Section IX of the proposed Final Judgment requires AEG to
15 submit semiannually for a period of five years to the Department
16 of Justice copies of correspondence with its members concerning
17 any principle of policy or collective statement pertaining to
18 advertising, price competition, or solicitation by engineering
19 geologists.

20 B. Scope of the Proposed Final Judgment

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

23 Section II of the proposed Final Judgment provides that the
24 Final Judgment shall apply to AEG and to AEG's officers,
25 directors, agents, employees, sections, committees, successors,
26 and assigns, and to all other persons in active concert or
27
28

1 participation with any of them who shall have received actual
2 notice of the Final Judgment.

3 C. Effect of the Proposed Judgment on Competition

4 The relief in the proposed Final Judgment is designed to
5 ensure that through unfettered advertising, price competition and
6 solicitation, engineering geologists have the opportunity to make
7 their services known on such terms and conditions as reflect their
8 unilateral competitive judgment, and that consumers have the
9 opportunity to select and receive engineering geology services on
10 the basis of free and open competition.

11 Three methods for determining compliance with the terms of
12 the Final Judgment are provided. First, Section X provides that
13 AEG is required to file each year a report setting forth the steps
14 it has taken during the prior year to comply with the provisions
15 of the Final Judgment. Second, Section XI provides that, upon
16 reasonable notice, the Department of Justice shall be given access
17 to any of AEG's records relating to matters contained in the Final
18 Judgment and permitted to interview any officers, employees, and
19 agents of AEG. Finally, Section XI also provides that, upon
20 written request, the Department of Justice may require AEG to
21 submit written reports about any matters relating to the Final
22 Judgment.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 AEG.

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 Gary R. Spratling, Acting Chief, San Francisco Field Office, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, P. O. Box 36046, San Francisco, CA 94102, 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 XIII of the

1 proposed Final Judgment provides that the Court retains
2 jurisdiction over this action, and the parties may apply to the
3 Court for any order necessary or appropriate for the modification,
4 interpretation or enforcement of the Final Judgment.

5 VI

6 ALTERNATIVE TO THE PROPOSED FINAL JUDGMENT

7 The alternative to the proposed Final Judgment would be a
8 full trial of the case. In the view of the Department of Justice,
9 such a trial would involve substantial cost to the United States
10 and is not warranted since the proposed Final Judgment provides
11 all the relief that the United States sought in its Complaint.

12 VII

13 DETERMINATIVE MATERIALS AND DOCUMENTS

14 No materials and documents of the type described in Section
15 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. §
16 16(b), were considered in formulating the proposed Final Judgment.

17 Respectfully submitted,

18 James E. Figenshaw
19 Antitrust Division
20 U.S. Department of Justice
21 450 Golden Gate Avenue
22 P. O. Box 36046
23 San Francisco, CA 94102

24 /s/ James E. Figenshaw

25

26 Attorney for the Plaintiff
27 United States of America
28