

UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

BROWN & ROOT, INC.,  
HALLIBURTON COMPANY, and,  
OFFSHORE PIPELINES, INC.

Defendants.

90 1986

Civil Action No.

Filed: August 17, 1990

Entered:

Judge Gesell

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 Brown & Root, Inc., Halliburton Company, and Offshore Pipelines, Inc. in this civil antitrust proceeding.

I.

NATURE AND PURPOSE OF THE PROCEEDING

On August 17, 1990, the United States filed a Complaint alleging that the proposed acquisition from Brown & Root, Inc. (hereafter "B&R") by Offshore Pipelines, Inc. (hereafter "OPI") 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 provision of pipelay/pipebury barge services in water depths of approximately 200 to 400 feet, or with pipe of diameters greater than 12 inches in the United States Gulf of Mexico ("intermediate pipelay/pipebury market"). Both B&R and OPI provide such services. Pipelay and pipebury barge services are contracted for by oil companies to install and bury pipeline in connection with the offshore development and production of crude oil and natural gas in the U.S. Gulf. The Complaint seeks, among other relief, a permanent injunction preventing defendants from, in any manner, combining their marine construction businesses.

On August 16, 1990, the United States and defendants filed a Stipulation by which they consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, as explained more fully below, OPI would be required to sell, by March 15, 1991, certain pipelay and pipebury vessels. If it should fail to do so, a trustee appointed by the Court would be empowered to sell these vessels.

The United States, B&R, and OPI 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 May 4, 1990, B&R and OPI entered into a purchase agreement under which OPI would purchase from B&R 23 marine construction vessels, including seven vessels located in the U.S. Gulf, and associated assets. This acquisition would, if unchallenged, effectively merge all of B&R's and OPI's marine construction business. The purchase price to be paid by OPI to B&R for the marine construction business of B&R is approximately \$80 million.

Brown & Root, Inc. is an engineering and construction services company, headquartered in Houston, Texas. Along with its other construction businesses, B&R's marine unit has owned a marine construction fleet of 23 major vessels and has provided marine construction services in the U.S. Gulf and other international offshore regions. B&R is a wholly-owned subsidiary of Halliburton Company, an oil field services firm, located in Dallas, Texas. In 1989, Halliburton had total assets of \$853 million and revenues of \$2.9 billion. OPI is headquartered in Houston, Texas. By January 1990, OPI had assets of \$70 million and earned revenues of \$104 million in 1989. OPI has provided marine construction services with its ten-vessel fleet in the U.S. Gulf.

The Complaint alleges that the intermediate pipelay/pipebury market is a relevant product market for antitrust purposes. As alleged in the Complaint, the United States Gulf of Mexico is a

relevant geographic market, within the meaning of Section 7 of the Clayton Act. Pipelay barges, pipebury barges, and combination pipelay/pipebury barges are specially designed, built or modified, and equipped to be capable of laying and/or burying pipeline on the sea bottom. Vessels vary in their capabilities to lay or bury certain diameters of pipe and to do so in certain water depths depending predominantly on the size of the vessel. The ability to lay or bury larger diameter pipe in deeper water requires a larger vessel, with greater anchoring capability, and the capacity to control heavier or longer pipe. There is no competitive substitute for pipelay/pipebury barge services to which a significant number of customers would turn in the event of a small nontransitory price increase. Firms that provide pipelay/pipebury barge services in the U.S. Gulf compete with each other for bids. Customers generally solicit bids from the companies they believe are capable of working at the water depths and with the pipe diameters required for the particular project. For almost all projects at water depths of approximately 200-400 feet, or with pipe of diameters greater than 12 inches, currently only four firms compete in the U.S. Gulf. Two of those four firms are B&R and OPI.

The Complaint alleges that the intermediate pipelay/pipebury market is highly concentrated and would become substantially more concentrated as a result of the violation alleged herein. Based on 1989 sales data, B&R and OPI have, respectively, about 31 and 27 percent, respectively, of the intermediate pipelay/pipebury

market in which only four firms now compete. The merger of B&R and OPI would result in an increase in the Herfindahl-Hirschman Index by about 1689 to 4764. 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.

Entry into the intermediate pipelay/pipebury market is time-consuming and costly, and is unlikely to occur in response to a small but significant nontransitory price increase. To enter the market, a firm must obtain a barge of sufficient size to hold the necessary equipment and to operate in deeper waters. Such barges are not currently available in the U.S. Gulf. If the only available barges are located somewhere other than the U.S. Gulf, the entrant must bear the significant cost of transporting the vessel to the Gulf. Further, after a barge is obtained, the entrant will likely have to refurbish the barge and install the necessary equipment to lay and bury pipe. Finally, entrants must find capable personnel to work on the barges to provide the services. All of these steps are time-consuming and costly.

### III.

#### EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States brought this action because the effect of the proposed acquisition from B&R by OPI may be substantially to lessen competition, in violation of Section 7 of the Clayton Act, in the intermediate pipelay/pipebury market. The risk to competition posed by this transaction, however, substantially would be eliminated were sufficient pipelay/pipebury vessels to

be sold to a purchaser that would operate them as an active, independent and financially viable competitor in the intermediate pipelay/pipebure 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 intermediate pipelay/pipebure 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 OPI, by March 15, 1991, to divest the BAR-278 combination pipelay/pipebure barge and the LB-282 combination pipelay/pipebure barge to a purchaser or purchasers that has the intent and capability to compete promptly and effectively in the provision of pipelay/pipebure barge services in the U.S. Gulf.

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 OPI fail to complete its divestiture by March 15, 1991, 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 three 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 OPI will be required to pay for all of the trustee's sale-related expenses.

Section VI. of the proposed Final Judgment would assure the United States an opportunity to review any proposed sale, whether by OPI 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 consummation. Upon objection by the United States to a sale of the divestiture assets by the defendant OPI, 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.

Under Section IX. of the proposed Final Judgment, defendant OPI must take certain steps to ensure that, until the required divestiture has been completed, both the BAR-278 and the LB-282 will be maintained as distinct salable assets. Until such divestiture, defendant OPI must also preserve and maintain the divestiture assets as saleable assets, making all reasonable efforts to maintain the assets in a condition which makes them usable as part of a viable and active business of providing pipelay/pipebury barge services.

Pursuant to Section V., 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 or ordering that the divestiture assets be sold to B&R at a Court-determined price. Section XII. provides that the proposed Final Judgment will expire on the fifth 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 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 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  
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## VI.

### ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment requires that the divestiture assets be sold to a purchaser or purchasers that would use them promptly to provide viable competition in the provision of pipelay/pipebury barge services in the U.S. Gulf. Thus, compliance with the proposed Final Judgment and the completion of the sale required by the Judgment would 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 OPI's provision of pipelay/pipebury barge 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 from B&R by OPI from having a significant anticompetitive effect in the relevant market alleged, the intermediate pipelay/pipebury market.

Of the seven B&R barges currently operating in the United States Gulf of Mexico, three compete with OPI primarily in the intermediate pipelay/pipebury market: the BAR-278 combination pipelay/pipebury barge, the BAR-289 pipelay barge and the BAR-356 pipebury barge. The proposed Final Judgment provides that OPI will divest the BAR-278, and, instead of the BAR-289 and BAR-356, OPI's LB-282 combination pipelay/pipebury barge. The LB-282 competes directly with the BAR-289 and BAR-356 in the relevant market. Thus, in the hands of an appropriate purchaser or purchasers the divestiture assets will effectively replace B&R as a competitor in the intermediate pipelay/pipebury market.

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: August 17, 1990

Respectfully submitted,



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