IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO._____
	)	
v.	)	
	)	
TOM PAIGE CATERING CO., INC.	)	
and VALLEY FOODS, INC.,	)	
	)	
Defendants.	)	

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2 of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b), the United States files this Competitive Impact Statement relating to the proposed final judgment in United States v. Tom Paige Catering Co. and Valley Foods, Inc., submitted for entry in this civil antitrust proceeding.

I

NATURE AND PURPOSE OF THE PROCEEDINGS

On December 16, 1997 the United States filed a civil antitrust complaint under Section 4 of the Sherman Act, as amended, 15 U.S.C. § 4, alleging that the above-named defendants combined and conspired to lessen and eliminate competition on food service contracts with the Cleveland, Ohio, Head Start program, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

The complaint seeks a judgment by the Court declaring that the defendants engaged in an unlawful combination in restraint of trade in violation of the Sherman Act. It also seeks an order by the Court to enjoin the defendants from any such activities or other activities having a similar purpose or effect in the future.

The United States and defendants have stipulated that the proposed final judgment may be entered after compliance with the APPA, unless the United States withdraws its consent.

The Court's entry of the proposed final judgment will terminate this civil action against these defendants, except that the Court will retain jurisdiction over the matter for possible further proceedings to construe, modify or enforce the judgment, or to punish violations of any of its provisions.

II

DESCRIPTION OF THE PRACTICES GIVING RISE TO THE ALLEGED VIOLATIONS OF THE ANTITRUST LAWS

Tom Paige Catering ("Paige") is an Ohio corporation doing business in greater Cleveland, Ohio. Valley Foods, Inc. ("Valley") is a Ohio corporation with its principal place of business in Youngstown, Ohio. Both Paige and Valley have been engaged in the business of preparing and serving meals on a contract basis.

Since at least 1991, Paige and Valley have bid on contracts for meals to children enrolled in the Cleveland Head Start program. Head Start is a program which provides comprehensive developmental services for low-income, pre-school children, ages three to five, and social services for their families. The meals

for the children enrolled in the program are funded entirely by the federal government through the United States Department of Agriculture. The funds are administered by the State of Ohio's Department of Education and managed, locally, by sponsoring organizations. The Cleveland Head Start program is sponsored by the Council for Economic Opportunity in Greater Cleveland ("CEOGC"), a not for profit organization. The CEOGC solicits bids on contracts for breakfasts, lunches, and snacks for the Head Start program in accordance with regulations promulgated by the United States Department of Agriculture and the State of Ohio. The annual value of these contracts has ranged in recent years from around $300,000 to over $500,000.

Since at least September 1992, Paige and Valley have been the only bidders on the meal contracts with Head Start. Beginning in September of 1994, Paige and Valley bid as a joint venture. The purpose of their joint venture was to illegally end competition between them. This joint venture suppressed and eliminated competition among the defendants in the provision of food service contracts to Head Start and deprived tax payers of free and open competition in the sale of food contracting services to Head Start. After the joint venture began, the cost of meals to Head Start did in fact increase. By way of example, Valley's winning bid in September 1993 included a bid of $1.01 per meal for cold lunches. In 1994, the joint venture obtained $1.70 per meal for cold lunches. It is likely that at least part of the increase in prices was due to lack of competition between Paige and Valley. Paige and Valley's joint venture is a

contract, combination, or conspiracy in restraint of trade in violation of 15 U.S.C. § 1.

III

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and the defendants have stipulated that a final judgment, in the form filed with the Court, may be entered by the Court at any time after compliance with the APPA, 15 U.S.C. § 16(b)-(h). The proposed final judgment provides that the entry of the final judgment does not constitute any evidence against or an admission by any party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the APPA, entry of the proposed final judgment is conditioned upon the Court finding that its entry will be in the public interest.

The proposed final judgment contains three principal forms of relief. First, the defendants are ordered to dissolve the joint venture formed by them on April 1, 1994. Second, the defendants are enjoined from engaging in conduct, either among themselves or with other competitors, that could have similar anticompetitive effects. Third, the proposed final judgment places affirmative obligations on the defendants to pursue a compliance program directed toward avoiding a repetition of their anticompetitive behavior.

A. Prohibited Conduct

Section IV of the proposed final judgment orders the dissolution of the defendants' joint venture. Section V broadly enjoins each defendant from agreeing with other food service contractors to fix prices on food service contracts (V (A)); from

participating in any future discussions or communications with other food service contractors regarding the prices quoted on food service contracts (V(B)); from entering into territorial or customer allocation agreements with other food service contractors (V(C)); and from entering into any agreements regarding food service contracts with any non-defendant without notifying the United States (V(D)).

B. Defendants' Affirmative Obligations

Section VI requires that within thirty (30) days of entry of the final judgment, each defendant adopt an affirmative compliance program directed toward ensuring that its employees comply with the antitrust laws. More specifically, the program must include the designation of an Antitrust Compliance Officer responsible for compliance with the final judgment, and reporting any violations of its terms. It further requires that each defendant furnish a copy of the final judgment, within sixty (60) days of the date of its entry, to each of its officers and directors and each of its employees who is engaged in or has responsibility for or authority over pricing of food service contracts and to certify within seventy-five (75) days that it has distributed those copies and designated an Antitrust Compliance Officer. Copies of the final judgment also must be distributed to anyone who becomes such an officer, director or employee within thirty (30) days of holding that position and to all such individuals annually.

Furthermore, Section VI requires each defendant to brief each officer, director and employee engaged in or having

responsibility over pricing of food service contracts as to the defendant's policy regarding compliance with the Sherman Act and with the final judgment, including the advice that his or her violation of the final judgment could result in a conviction for contempt of court and imprisonment or fine and that the defendant will make legal advice available to such persons regarding compliance questions or problems.

Section VII requires each defendant provide annual certification to the plaintiff of the fact and manner of its compliance. Each defendant annually must obtain (and maintain) certifications from the persons designated in Section VI. Each such person must certify that the aforementioned briefing, advice and copy of the final judgment were received and understood and that he or she is not aware of any violation of the final judgment that has not been reported to the Antitrust Compliance Officer.

Under Section VIII of the final judgment, the Justice Department will have access, upon reasonable notice, to each defendant’s records and personnel in order to determine compliance with the judgment.

D. Scope of the Proposed Judgment

(1) Persons Bound by the Judgment

The proposed judgment expressly provides in Section III that its provisions apply to each of the defendants, to each of its officers, directors, agents and employees, to each of its subsidiaries, successors and assigns, and to all other persons who receive actual notice of the terms of judgment.

In addition, Section III of the judgment prohibits each of the defendants from selling or transferring all or substantially all of its stock or assets unless the acquiring party files with the Court its consent to be bound by the provisions of the judgment.

(2) Duration of the Judgment

Section IX provides that the judgment will expire on the tenth anniversary of its entry.

E. Effect of the Proposed Judgment on Competition

The prohibition terms of Section IV and Section V of the judgment are designed to ensure that each defendant will act independently in determining the prices, and terms and conditions at which it will enter into food service contracts, and that there will be no conspiratorial restraints on the competition for food service contracts. The affirmative obligations of Sections VI and VII are designed to insure that each corporate defendant's employees are aware of their obligations under the decree in order to avoid a repetition of behavior that occurred limiting competition for food service contracts. Compliance with the proposed judgment will prevent joint ventures that illegally restrict competition or foster price collusion and allocation of sales, markets, and customers by the defendants with each other or between them and other food service contractors.

IV

REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

After entry of the proposed final judgment, any potential plaintiff who might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal and equitable remedies which that person may have had if the proposed judgment had not been entered. The proposed judgment may not be used, however, as prima facie evidence in litigation, pursuant to Section 5(a) of the Clayton Act, as amended, 15 U.S.C. § 16(a).

V

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The proposed final judgment is subject to a stipulation between the government and the defendants which provides that the government may withdraw its consent to the proposed judgment any time before the Court has found that entry of the proposed judgment is in the public interest. By its terms, the proposed judgment provides for the Court's retention of jurisdiction of this action in order to permit any of the parties to apply to the Court for such orders as may be necessary or appropriate for the modification of the final judgment.

As provided by the APPA (15 U.S.C. § 16), any person wishing to comment upon the proposed judgment may, for a sixty-day (60) period subsequent to the publishing of this document in the Federal Register, submit written comments to the United States Department of Justice, Antitrust Division, Attention: William J.

Oberdick, Acting Chief, Great Lakes Office, Plaza 9 Building; 55 Erieview Plaza, Suite 700; Cleveland, Ohio 44114-1816. Such comments and the government's response to them will be filed with the Court and published in the Federal Register. The government will evaluate all such comments to determine whether there is any reason for withdrawal of its consent to the proposed judgment.

VI

ALTERNATIVE TO THE PROPOSED FINAL JUDGMENT

The alternative to the proposed final judgment considered by the Antitrust Division was a full trial of the issues on the merits and on relief. The Division considers the substantive language of the proposed judgment to be of sufficient scope and effectiveness to make litigation on the issues unnecessary, as the judgment provides appropriate relief against the violations alleged in the complaint.

VII

DETERMINATIVE MATERIALS AND DOCUMENTS

No materials or documents were considered determinative by the United States in formulating the proposed Final Judgment.

Therefore, none are being filed pursuant to the APPA, 15 U.S.C. § 16(b).

Dated:

Respectfully submitted,

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_____
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