

Part III of the proposed order would require the AFRA distribute copies of the order and accompanying complaint, as well as certified Spanish translations, to each person who, at any time since November 22, 1994, has been an officer, director, manager, employee, or participating pharmacy in AFRA, and to each payer or provider, who at any time since November 22, 1994, has communicated any desire, willingness, or interest in contracting for pharmacy goods and services with AFRA members.

Parts IV and V of the order impose certain reporting requirements in order to assist the Commission in monitoring compliance with the order.

The proposed consent order would terminate 20 years after the date it is issued.

By direction of the Commission.

Donald S. Clark,
Secretary.

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FEDERAL TRADE COMMISSION

[File No. 9410047]

Columbia River Pilots; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Action proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 19, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: K. Shane Woods or Charles A. Harwood, Seattle Regional Office, Federal Trade Commission, 915 Second Ave., Suite 2896, Seattle, Washington 98174, (206) 220-6363.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice

is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 14, 1998), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted a proposed consent order from Columbia River Pilots ("COLRIP"). COLRIP is an association of approximately forty marine pilots licensed by the State of Oregon to provide navigational assistance to vessels on the Columbia River. COLRIP facilitates the provision of marine pilotage by its members by, among other things, dispatching marine pilots to incoming and outgoing vessels and collecting and distributing marine pilots' fees.

In 1989, two pilots resigned from COLRIP to form a competing pilotage group, Lewis & Clark Pilotage, Inc. ("L&C"). For the first time in forty years, there was competition for pilotage services on the Columbia River. The benefits from this competition were immediate and significant. L&C made several improvements in its service that reduced costs to shippers.

The profitability of shippers depends on the speed and volume of shipments. Ships cost tens of thousands of dollars a day to operate. Shippers' costs are lower the less time ships are on the river and the more product they ship. Marine pilots play an important role in this effort, because they influence the time a vessel is on the river and how much cargo is transported. L&C quickly improved efficiency on the Columbia River by expanding the hours pilots moved vessels, by working with shippers to get a maximum load for the

time of sailing, and by being available to move vessels twenty-four hours a day, without significant advance notice. The results were dramatic. For example, at Peavey Grain Company, a ConAgra-owned grain elevator that is among the largest on the West Coast, L&C's practices improved the rate at which Peavey funneled grain through its elevators by more than 10%, resulting in significant cost reductions for Peavey.

L&C's innovations reverberated through the market. COLRIP improved its services in response to L&C by, e.g., dispatching pilots more quickly and moving longer and deeper vessels under a broader range of conditions with fewer tugs. Before L&C's entry, COLRIP offered none of the service innovations that L&C provided Peavey. After L&C's formation, the Oregon legislature modified Oregon's pilotage statute to protect competition from regulatory interference in marine pilotage.

Unfortunately, the benefits of competition were short lived. COLRIP took actions to eliminate L&C and any future competitors. Soon after L&C's formation, COLRIP adopted a series of penalties for its remaining members so severe that no other COLRIP pilot was likely to leave COLRIP to join L&C or to form a new company. Any COLRIP pilot who left to compete with COLRIP would forfeit \$200,000, appreciation in stock in a corporation owned by COLRIP members, pension benefits, and six months' work on the Columbia. This last penalty would not only cost the marine pilot approximately \$70,000 in lost revenues, but would also provide grounds under Oregon law for requiring that the pilot either be retrained or have his license revoked. Because COLRIP was responsible for pilot training, this penalty could have effectively ended a pilot's career on the Columbia River.

In 1991, L&C sued COLRIP, alleging that COLRIP instigated a series of acts to eliminate competition and preserve its monopoly, including threatening shipping agents with labor disruptions should they hire L&C for work outside Peavey. See *Lewis & Clark Pilotage Inc. v. Columbia River Pilots*, No. CV91-25 (D. Ore. filed January 8, 1991). COLRIP and L&C settled this litigation on terms that allowed L&C to survive, but restricted competition. COLRIP agreed to let L&C serve shippers berthed at Peavey, but L&C could not provide pilotage to any other vessels. L&C could bid on business at new docks, but it could not expand by more than a single pilot, which limited its ability to serve new business.

In addition, as part of the litigation settlement, COLRIP required L&C not to enter exclusive dealing contracts. L&C's

exclusive dealing contract with Peavey had fostered L&C's entry. It is likely that an upstart firm such as L&C could be successful only if it could enter exclusive deals.

Finally, the settlement prohibited L&C from proposing or supporting a rate structure that did not have the essential features of the current rate structure. This provision substantially reduced competition in the rate-setting process. Rates are set by the Board after soliciting proposals from shippers and pilot groups.

The settlement permitted L&C to continue to compete, although at a diminished level. The penalties imposed by COLRIP on pilots leaving to compete with COLRIP were devastating to competition. Because L&C could not recruit new pilots, L&C was forced to exit the market when its founding members retired.

The complaint charges that COLRIP's penalties on pilots leaving to compete and its settlement with L&C violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. COLRIP's penalties on pilots leaving to compete with COLRIP protected COLRIP from additional competition. Not one pilot left to compete with COLRIP, either by joining L&C or by forming another pilotable group, after COLRIP adopted these penalties. Indeed, no pilot has left COLRIP since L&C's founders retired and COLRIP regained its monopoly. L&C's pilotage business was very profitable and, absent COLRIP's draconian penalties, should have attracted competition. In addition, COLRIP's settlement with L&C all but eliminated the ability of L&C to compete with COLRIP before L&C exited the market. The settlement substantially limited L&C's ability to offer pilotage to customers other than Peavey Grain Company and reduced L&C's ability to influence rates before the Oregon Board of Maritime Pilots. The settlement provisions and the penalties on departing pilots were not justified on efficiency grounds.

The proposed consent order would prohibit COLRIP from penalizing marine pilots who leave to compete with COLRIP, except where a pilot either has been a member of COLRIP for less than five years or fails to give COLRIP ninety days' notice of his intention to leave. COLRIP is also required to notify its members and the local shippers' association of this prohibition.

COLRIP's ability to penalize pilots who leave before serving five years appears unlikely to prevent competition in pilotage, since it affects only 25% of

COLRIP's members. Approximately 75% of COLRIP's marine pilots would immediately be free to leave COLRIP without a penalty. Moreover, it appears reasonable for COLRIP to demand that pilots remain for some period after COLRIP has trained them. Similarly, the notice requirement appears too brief to reduce significantly a pilot's incentive to leave and would afford COLRIP the opportunity to attend to internal issues raised by a departure, such as pilot scheduling changes and any contractual pay-outs required by a departure.

Should competition emerge, the proposed consent order also would protect that competition by prohibiting COLRIP from entering into agreements similar to the ones with L&C. That is, COLRIP cannot agree with a competitor to allocate customers, limit a competitor's size, or restrict the competitor's ability to enter exclusive agreements with customers or to submit rate proposals or otherwise communicate with the Oregon Board of Maritime Pilots. Finally, COLRIP cannot prevent a COLRIP marine pilot from recommending or otherwise supporting an applicant for a pilot's license or for training to obtain one. This restriction on COLRIP should encourage more applicants and expand the number of available pilots.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The purpose of this analysis is to assist public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement containing the proposed consent order or to modify in any way its terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98-33706 Filed 12-18-98; 8:45 am]

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GENERAL SERVICES ADMINISTRATION

Federal Supply Service; Solicitation for a Third Party Logistics Provider To Perform Freight Shipment Management Services

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of Extension to comment period.

SUMMARY: GSA published for comment in the **Federal Register** on August 7, 1998, a notice advising industry of a solicitation for Third Party Logistics Services for a freight shipment test pilot project (63 FR 42402). The solicitation was revised to address issues raised by industry as well as to incorporate ideas generated by GSA's research and discussions. GSA issued the revised draft solicitation on October 22, 1998, and announced it in the *Commerce Business Daily* but not in the **Federal Register**. At a November 16, 1998, industry briefing on the revised draft solicitation GSA officials requested industry comments by December 4, 1998. This notice advises that GSA is extending the comment period, announced in the November 16, 1998 industry briefing as set forth below in the **DATES** paragraph.

DATES: Please submit your comments by Friday, January 8, 1999.

ADDRESSES: Mail comments to Ms. Patricia G. Walker, Contracting Officer, Contract Management Division (4FQ-P), GSA, FSS, 401 W. Peachtree Street, NW, Suite 2600, Atlanta, GA 30365-2550, Attn: 3PL Solicitation.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia G. Walker, Contracting Officer, in writing at Contract Management Division, (4FQ-P), GSA, FSS, 401 W. Peachtree Street, NW, Suite 2600, Atlanta, GA 30365-2550, Attn: 3PL Solicitation; by phone at 404-331-3059; or by e-mail at patriciag.walker@gsa.gov.

SUPPLEMENTARY INFORMATION: In the draft solicitation, GSA proposed to change a variety of procedures now used under its transportation program. Proposed new procedures to be performed by the contractor include:

- (a) Using commercial forms and/or electronic commerce for shipment processing and invoicing;
- (b) Pre-screening carriers for participation in GSA's freight program;
- (c) Selecting carriers based on the greatest value advantage to the Government;
- (d) Attaining cost efficiencies through use of multiple procurement strategies;
- (e) Managing freight shipments from receipt of shipment data through delivery;
- (f) Tracking/tracing shipments and providing access to tracking/tracing information via the Internet so GSA customers can monitor shipment status;
- (g) Managing loss and damage claims from receipt of loss/damage reports to filing, tracking, monitoring, and settling claims; and