

below, and any known shareholders of Chicago and North Western Transportation Company who have not tendered their shares in the tender offer commenced March 23, 1995, by UP Rail, Inc.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927-5610. [TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: In our UP/CNW Decision No. 25 (served March 7, 1995), we approved common control of UP (class I railroads Union Pacific Railroad Company and Missouri Pacific Railroad Company) and CNW (class I railroad Chicago and North Western Railway Company). Union Pacific Railroad Company (UPRR) and Missouri Pacific Railroad Company (MPRR) are indirect wholly owned subsidiaries of Union Pacific Corporation (UPC), a non-carrier holding company. CNW is a direct wholly owned subsidiary of Chicago and North Western Transportation Company (CNWT), another non-carrier holding company. UPC, UPRR, MPRR, CNWT, and CNW are referred to herein as the primary applicants. The UP/CNW common control that we approved envisioned that UP and CNW would come under common control with the conversion, from non-voting status to voting status, of the approximately 29.5% of the CNWT common stock held by non-carrier UP Rail, Inc. (UPR), another indirect wholly owned UPC subsidiary. Our UP/CNW Decision No. 25 became effective on April 6, 1995.

On March 16, 1995, UPC and CNWT entered into an Agreement and Plan of Merger (the Merger Agreement) that provides, among other things, (1) that UPR will make a tender offer for 100% of CNWT's common stock at a price of \$35 per share in cash, and (2) that all non-tendering CNWT shareholders will also receive \$35 per share in cash following the UPR/CNWT merger. The tender offer was commenced on March 23, 1995, and is scheduled to expire on April 24, 1995.

By petition (UP/CNW-134) filed April 4, 1995, the primary applicants have requested that we issue a determination that the terms and conditions of the proposed UPR/CNWT merger (in particular, the \$35-per-share price to be paid to CNWT shareholders) are just and reasonable. The primary applicants seek this determination (1) because they believe the Commission is required by *Schwabacher v. United States*, 334 U.S. 182 (1948), to make such a determination to protect minority shareholders and (2) in order to immunize the UPR/CNWT merger from the otherwise applicable state law

rights, particularly the otherwise applicable state law appraisal rights, of dissenting CNWT shareholders. 49 U.S.C. 11341(a). A copy of the Merger Agreement can be found in UP/CNW-134, Exhibit B, Annex I.

The primary applicants indicate that they have served a copy of their UP/CNW-134 petition on all active parties in the Finance Docket No. 32133 proceeding and on counsel for plaintiffs in certain Delaware shareholder suits challenging various aspects of the Merger Agreement. The primary applicants have also pledged to serve a copy of their petition on any known CNWT shareholders who do not tender their shares in response to the tender offer. The primary applicants urge expedited handling of their petition (in particular: that we publish notice of their petition in the **Federal Register**; that we allow interested persons 30 days to file comments; that we further allow the primary applicants an additional 15 days to file a reply; and that we proceed promptly to a decision thereafter).

Our statutory mandate, 49 U.S.C. 11344(c), requires, among other things, that we determine, in appropriate cases, that the terms and conditions of certain transactions affecting stockholders are just and reasonable. *See, e.g., Union Pacific Corp. et al.—Cont.—MO-KS-TX Co. et al.*, 4 I.C.C.2d 409, 515 (1988) ("In appraising this transaction affecting the rights of stockholders, it is incumbent upon us to see that the interests of minority stockholders are protected and that the overall proposal is just and reasonable to those stockholders. *Schwabacher v. United States*, 344 U.S. at 198, 201."). Because the UP/CNW-134 petition implicates our statutory mandate and involves a matter that requires expedited regulatory action, we will proceed upon the schedule urged by the primary applicants.

Accordingly, we solicit comments from all interested persons respecting whether the terms and conditions of the proposed UPR/CNWT merger are just and reasonable. Such comments must be submitted by May 31, 1995. The primary applicants may file replies to such comments by June 15, 1995.

Any interested person who has not received copies of the UP/CNW-134 petition and the primary applicants' letter dated April 17, 1995 (announcing a settlement of the Delaware litigation) may request copies, in writing or by telephone, from Arvid E. Roach II, Covington & Burling, 1201 Pennsylvania Avenue, N.W., P.O. Box 7566, Washington, D.C. 20044-7566 (telephone: 202-662-5388).

In addition to submitting an original and 10 copies of all documents filed

with the Commission, the primary applicants and any commenters are encouraged to submit all pleadings and attachments as computer data contained on a 3.5-inch floppy diskette formatted for WordPerfect 5.1 (or formatted so that it can be converted by WordPerfect 5.1). The primary applicants are also encouraged to submit their UP/CNW-134 petition (including Exhibits A and B thereto), and their letter dated April 17, 1995 (including Exhibits A and B thereto), on such a diskette.

Decided: April 19, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

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DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed partial consent decree in *United States v. Metropolitan Dade County, et al.*, Case No. Civ-93-1109-Moreno, was lodged on April 19, 1995, with the United States District Court for the Southern District of Florida. The consent decree settles all claims for injunctive relief and civil penalties brought against Metropolitan Dade County and the Miami-Dade Water and Sewer Authority Department under Sections 301, 309 (b) and (d), and 402 of the Clean Water Act, 33 U.S.C. 1311, 1319 (b) and (d), and 1342, and sets forth remedial measures, supplemental environmental projects, and a civil penalty.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Metropolitan Dade County, et al.*, DOJ Ref. #90-5-1-1-4022.

The proposed consent decree may be examined at the office of the United States Attorney, Southern District of Florida, 99 N.E. 4th Street, Miami, Florida 33132; the Region IV Office of the United States Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G

Street, NW., 4th Floor, Washington, DC 20005, (202) 624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of \$36.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95-10549 Filed 4-28-95; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement

In the matter of: *United States v. Oregon Dental Service.*

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)-(h), that a proposed Final Judgment, Settlement Agreement, and Competitive Impact Statement have been filed with the United States District Court for the Northern District of California in *United States of America v. Oregon Dental Service*, Civil Action No. C95 1211 FMS. The Complaint in this case alleges that the defendant and others engaged in a combination in unreasonable restraint of interstate trade and commerce in violation of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment enjoins the defendant for five years from maintaining, adopting, or enforcing a clause in its contracts with dentists that requires the dentist to give the defendant the lowest fees he or she offers to any person or dental plan. It also enjoins the defendant from taking any other action, directly or indirectly, to influence or attempt to influence dentists' discounting of fees or participation in other dental plans. Finally, the proposed Final Judgment enjoins the defendant from disclosing or in any way directly revealing to dentists its maximum allowable or acceptable fee for dental procedures.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period, which runs from the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Christopher S. Crook, Acting Chief, San Francisco Office, Box 36046, Antitrust Division, U.S. Department of Justice,

San Francisco, California 94102 (telephone: (415) 556-6300).

Constance K. Robinson,

Director of Operations, Antitrust Division.

Barbara J. Nelson, Philip R. Malone, Carla G. Addicks, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, 10th Floor, San Francisco, California 94102-3478, (415) 556-6300, Attorneys for the United States

In the United States District Court Northern District of California

[Civil No. C95 1211 FMS]

In the matter of: *United States of America*, Plaintiff, v. *Oregon Dental Service*, Defendant.

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief against the defendant named herein, and complains and alleges as follows:

I. Jurisdiction and Venue

1. This Complaint is filed by the United States under Section 4 of the Sherman Act; 15 U.S.C. 4, as amended, to prevent and restrain a continuing violation by the defendant of Section 1 of the Sherman Act, 15 U.S.C. 1.

2. The defendant maintains an office, transacts business, and is found within the Northern District of California, within the meaning of 15 U.S.C. 22 and 28 U.S.C. 1391(c).

II. Defendant

3. Oregon Dental Service ("ODS"), is a corporation organized and existing under the laws of the State of Oregon with its principal place of business in Portland, Oregon. ODS provides dental coverage to employees of Oregon corporations and others. Certain of those employees are located in the Northern District of California.

4. ODS is a non-profit corporation whose participating providers consist of dentists licensed to practice in Oregon and who execute participating provider agreements with ODS. At material times, dentists comprised the majority of the Board of Directors of ODS. At material times, in excess of ninety percent of dentists licensed to practice in Oregon were participating providers of ODS.

5. Various firms and individuals, not named as defendants in this Complaint, have entered into agreements with ODS in violation of the Sherman Act as alleged in this Complaint, and have performed acts and made statements in furtherance thereof.

III. Trade and Commerce

6. At material times, ODS has engaged in the business of providing dental insurance coverage. ODS contracts directly with individual dentists and groups of dentists for the provision of dental services to persons covered by ODS' dental insurance plans. Participating dentists agree to comply with the terms of the contractual agreements with ODS, and to abide by ODS' rules and policies.

7. ODS compensates participating dentists on the basis of submitted fee schedules. At material times, payments from ODS to Oregon dentists constituted a significant portion of most individual participating dentist's receipts from the provision of dental services to patients.

8. At material times, ODS' "Participating Dentist Rules and Policies" contained provisions known as "most favored nation" clauses. These provisions stated that, for example, the "lowest fee accepted by the Dentist for services to be rendered to any group shall constitute the Dentist's filed fee scheduled for payment of ODS Health Plan claims."

9. ODS' enforcement of the most favored nation clauses in its rules and policies resulted in most participating dentists' refusal to discount their fees to non-ODS patients or competing dental plans.

10. ODS' most favored nation clauses have caused significant numbers of dentists to drop out of or refuse to join competing discount dental plans. Because such a large percentage of Oregon dentists participate with ODS' plan, the ODS most favored nation clauses have resulted in many competing dental plans being unable to attract and/or retain sufficient numbers of dentists to serve their members.

11. ODS periodically determines the amount it will pay for procedures to participating dentists based upon fee filings submitted by the participating dentists. A majority of these dentists used the fee schedule they filed with ODS as their fee schedule for all other patients, including those covered by other insurance plans and uninsured patients.

12. ODS sets the maximum fee allowable for a particular procedure at the 90th percentile of all fees submitted to it by participating dentists (the level at or above the fee charged by 90% of participating dentists). If 10 or fewer of a dentist's submitted fees are above the 90th percentile, ODS notifies the dentist of the amount of the maximum allowable fee. Most participating dentists file fee schedules proposing to charge more than the maximum