

*Date:* March 12, 1997 (9:00 a.m. to 5:00 p.m.).

*Location:* State Department, Loy Henderson Auditorium, 23rd Street Entrance.

The purpose of the meeting is to discuss an ACVFA Study on the State of the USAID/PVO Partnership.

The meeting is free and open to the public. However, notification by noon, March 11, 1997, through the Advisory Committee Headquarters is required. Persons wishing to attend the meeting must call Lisa J. Douglas (703) 351-0243 or Susan Saragi (703) 351-0244 or FAX (703) 351-0228/0212. Persons attending must include their name, organization, birthdate and social security number for security purposes.

Dated: January 29, 1997.

Adele Liskov,

*Acting Director, Office of Private and Voluntary Cooperation, Bureau for Humanitarian Response.*

[FR Doc. 97-4380 Filed 2-21-97; 8:45 am]

BILLING CODE 6116-01-M

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### **State of Oregon, et al. v. Jeff Mulkey, et al., No. 97-234MA District of Oregon, Filed February 11, 1997**

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (b)-(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Oregon in the above-captioned case.

On February 11, 1997 the United States jointly filed with the states of Oregon, California and Washington a complaint to prevent and restrain the defendants from violating Section 1 of the Sherman Act. The Complaint alleges that in late 1995 and early 1996 the defendant commercial crab fishermen were leaders in a conspiracy with unnamed co-conspirators to restrain competition among commercial crab fishermen in violation of § 1 of the Sherman Act. The conspiracy consisted of an agreement and concert of action between the defendants and co-conspirators to fix the price at which they would sell their catch to purchasers at a minimum of \$1.25 per pound and to eliminate competition among commercial fishermen in the sale of crab. As a result of the conspiracy, the vast majority of west coast commercial crab fishermen did not fish for crab during December 1995.

The proposed Final Judgment enjoins the defendants from participating in any discussion, communication or agreement, except as members of a fishermen's marketing association formed pursuant to the Fishermen's Collective Marketing Act (15 U.S.C. § 521) or similar state statutes, with other fishermen, regarding the price or sales terms to be negotiated with purchasers, or refraining from fishing while commercial fishermen are negotiating price with purchasers. The defendants are also enjoined from any interference with any other commercial fisherman's business through threats or other means of intimidation.

Public comment is invited within the statutory 60-day period. Such comments will be published in the Federal Register and filed with the Court. Comments should be addressed to Christopher S. Crook, Acting Chief, San Francisco Office, U.S. Department of Justice, Antitrust Division, Box 36046, 460 Golden Gate Avenue, San Francisco, California 94102 (telephone: (415) 436-6660).

Rebecca P. Dick,

*Deputy Director of Operations.*

Hardy Myers,

*Attorney General*

Andrew E. Aubertine,

*Assistant Attorney General, Oregon*

*Department of Justice, 1162 Court Street NE, Salem, Oregon 97310, (503) 378-4732, OSB #: 83013.*

Liaison counsel for all plaintiffs identified on attached signature pages.

In the United States District Court for the District of Oregon

State of Oregon, *ex rel.*, Attorney General Hardy Myers, State of Washington, *ex rel.*, Attorney General Christine O. Gregoire, State of California, *ex rel.*, Attorney General Daniel Lungren, United States of America, Plaintiffs, v. Jeff Mulkey, Jerry Hampel, Todd Whaley, Brad Pettinger, Joseph Speir, Thomas Timmer, Richard Sheldon, Dennis Sturgell, Allen Gann and Russell Smotherman, Defendants. Civil Action No. 97-234MA, Stipulation—Judge Malcom Marsh.

#### *Stipulation*

It is stipulated by and between the undersigned parties, and by their respective attorneys, that:

(1) The parties consent that a final judgment in the form hereto attached as Exhibit A may be filed and entered by the Court at any time after the expiration of the sixty (60) day period for public comment provided by the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (b)-(h), without further notice to any party or other proceedings, either upon the motion of any party or upon the Court's own motion, provided

that plaintiff has not withdrawn its consent as provided herein;

(2) The parties further consent that, pending entry of the Consent Decree, defendants shall be subject to and abide by the terms of the injunction set forth in the Consent Decree.

(3) The plaintiffs or any of them may withdraw their consent hereto at any time within said period of sixty (60) days by serving notice thereof upon the other party hereto and filing said notice with the Court;

(4) In the event one or more plaintiffs withdraw their consent hereto, this stipulation shall be of no effect and shall not be binding upon the withdrawing plaintiff(s) in this or any other proceeding, and the making of this stipulation shall not in any manner prejudice any consenting party to any subsequent proceedings.

Respectfully submitted,

Dated this 6th day of February, 1997.

Hardy Myers,

*Attorney General of Oregon.*

Andrew E. Aubertine #83013,

*Assistant Attorney General, Oregon*

*Department of Justice, 1162 Court Street, NE, Salem, Oregon 97310, (503) 378-4732.*

Dated this \_\_\_\_\_ day of January, 1997.

Christine O. Gregoire,

*Attorney General of Washington.*

Marta Lowy #14430,

*Assistant Attorney General.*

Brian Dew #18877,

*Assistant Attorney General, Office of the*

*Washington Attorney General, 900 4th Avenue, Suite 2000, Seattle, WA 98164, (206) 464-6433.*

Dated this 14th day of January, 1997.

Daniel Lungren,

*Attorney General of California.*

Lindsay Bower #69577,

*Assistant Attorney General, California*

*Department of Justice, 50 Fremont Street, Suite 300, San Francisco, CA 94105-2239, (415) 356-6377.*

Dated this \_\_\_\_\_ day of December, 1996.

United States of America Department of Justice, Antitrust Division

Richard Cohen WA#3671/CA79601,

*Trial Attorney, U.S. Department of Justice, Antitrust Division, 450 Golden Gate Avenue, San Francisco, CA 94102, (415) 436-6695.*

Dated this \_\_\_\_\_ day of December, 1996.

Thomas Triplett #65125,

*Schwabe, Williamson, et al. 1600-1800 Pacwest Center, 1211 SW 5th Avenue, Portland, OR 97204, (503) 796-2901.*

Counsel for Defendants Jeff Mulkey and Allen Gann

Dated this 30th day of December, 1996.

Michael Treman #063039 Cal.,

*Attorney at Law, 1428 Chapala Street, Santa Barbara, CA 93101, (805) 962-6544.*

Counsel for Defendant Thomas Timmer

Dated this \_\_\_\_\_ day of December, 1996.  
 Frank H. Hilton #66064,  
*Dunn, Carney, Allen, Higgins and Tongue*  
 851 SW 6th Avenue, #1500, Pacific First  
 Center, Portland, OR 97204, (503) 224-6440  
 Counsel for Defendants Brad Pettinger, Todd  
 Whaley, and Joseph Speir

Dated this \_\_\_\_\_ day of December, 1996.  
 Kathleen P. Eymann #79220,  
*Attorney at Law, 14303 SE Amillia Court,*  
*Portland, OR 97267, (503) 654-6797.*  
 Counsel for Defendants Jerry Hampel and  
 Richard Sheldon

Dated this \_\_\_\_\_ day of December, 1996.  
 Harold A. Snow #68156,  
*McCallister & Snow, 801 Commercial, P.O.*  
*Box 508, Astoria, OR 97103, (503) 325-2511.*  
 Counsel for Defendant Dennis Sturgell

Dated this \_\_\_\_\_ day of December, 1996.  
 Russell Smotherman,  
*Pro Se, 310 SW Cedar, Warrenton, OR 97146.*

Hardy Myers,  
*Attorney General*  
 Andrew E. Aubertine,  
*Assistant Attorney General, Oregon*  
*Department of Justice, 1162 Court Street*  
*NE, Salem, Oregon 97310, (503) 378-*  
*4732, OSB # 83013.*

Liaison counsel for all plaintiffs identified  
 on attached signature pages.

In the United States District Court for  
 the District of Oregon

State of Oregon, *ex rel.*, Attorney General  
 Hardy Myers, State of Washington, *ex rel.*,  
 Attorney General, Christine O. Gregoire, State  
 of California, *ex rel.*, Attorney General Daniel  
 Lungren, and United States of America,  
 Plaintiffs, v. Jeff Mulkey, Jerry Hampel, Todd  
 Whaley, Brad Pettinger, Joseph Speir,  
 Thomas Timmer, Richard Sheldon, Dennis  
 Sturgell, Allen Gann and Russell  
 Smotherman, Defendants. Civil Action No.  
 97-234MA, Consent Decree—Judge Malcom  
 Marsh.

Plaintiffs, through their respective  
 attorneys, and defendants, through their  
 respective attorneys or appearing pro se,  
 have stipulated to entry of this Consent  
 Decree in accordance with the terms of  
 the Antitrust Procedures and Penalties  
 Act, 15 U.S.C. § 16 and that this Consent  
 Decree shall be a consent judgment as  
 the term is used in 15 U.S.C. § 16(a).

*Whereas:* Plaintiffs, State of Oregon,  
 State of Washington, State of California,  
 and the United States Department of  
 Justice through their respective  
 attorneys, filed their complaint on  
 February 11, 1997, alleging a violation  
 of the Sherman Act, 15 U.S.C. § 1 and  
 counterpart state statutes, Oregon  
 Revised Statutes 646.725; Revised Code  
 of Washington § 19.86.030, and  
 California Professional & Business Code  
 §§ 16720-16770;

*Whereas:* Defendants Jeff Mulkey,  
 Jerry Hampel, Todd Whaley, Brad  
 Pettinger, Joseph Speir, Thomas

Timmer, Richard Sheldon, Dennis  
 Sturgell, Allen Gann and Russell  
 Smotherman deny any liability with  
 respect to all matters which are the  
 subject of the complaint;

*Whereas:* There has been no  
 determination by the Court that a  
 violation of law occurred;

*Whereas:* The plaintiffs and  
 defendants desire to resolve their  
 dispute without adjudication of any  
 issue of law or fact; and

*Whereas:* The Consent Decree shall  
 not be evidence against nor an  
 admission by any party with respect to  
 any issue of law or fact;

*Now, Therefore,* before the taking of  
 any testimony, and without trial or  
 adjudication of any issue of law or fact  
 herein, and upon the consent of the  
 parties hereto, it is hereby ordered,  
 adjudged and decreed as follows:

### *I. Jurisdiction*

This Court has jurisdiction over the  
 subject matter herein and each of the  
 parties consenting hereto. This Court  
 has jurisdiction over Counts I through  
 VIII of the Complaint pursuant to 15  
 U.S.C. § 4, 15 U.S.C. § 26, and 28 U.S.C.  
 § 1367(a). The Complaint states claims  
 upon which relief may be granted  
 against defendants under 15 U.S.C. § 1  
 and related pendent state antitrust  
 claims under ORS 646.725, 646.760 and  
 646.770; RCW § 19.86.030; and Cal Prof  
 & Bus. Code §§ 16720-16770.

### *II. Definitions*

As used in this Consent Decree:

A. "Association" means any group of  
 fishermen organized under the  
 Fisherman's Collective Marketing Act,  
 15 U.S.C. § 521 or under the companion  
 laws of the State of California, Cal. Corp.  
 Code § 130.26, the State of Washington,  
 RCW § 24.36, and/or the State or  
 Oregon.

B. "Commercial Seafood Fishermen"  
 means fishermen who fish for and catch  
 seafood products and sell the seafood  
 products to purchasers.

C. "Ex-vessel price" means the price  
 paid by purchasers to fishermen for  
 seafood products.

D. "Person" means any individual,  
 sole proprietorship, partnership, firm,  
 corporation or any other legal or  
 business entity.

E. "Purchasers" mean commercial  
 seafood processors, commercial seafood  
 canneries, retail stores and/or  
 restaurants.

F. "Seafood" and "Seafood Products"  
 mean crab, crab meat, and any and all  
 other crab products, whether fresh, raw,  
 cooked, frozen, canned, or otherwise  
 preserved or prepared for consumption.

### *III. Applicability*

The provisions of this Consent Decree  
 shall apply to plaintiffs and defendants  
 and to all of defendants' managers,  
 agents, employees, affiliates, and to  
 those persons in active concert or  
 participation with them who receive  
 actual notice of this Consent Decree by  
 personal service or otherwise.

### *IV. Injunction*

A. Defendants are enjoined from  
 forming or participating in, or  
 continuing to participate in any  
 agreement, plan, scheme, arrangement  
 or undertaking, with any other  
 commercial seafood fisherman, the  
 purpose or effect of which is:

1. To set, fix, or stabilize the ex-vessel  
 price of seafood or any price terms or  
 conditions for the sale of seafood,  
 directly or indirectly, either (i) through  
 coercion or intimidation, or threats of  
 coercion or intimidation, including, but  
 not limited to, the use or threat of use  
 of physical force or reprisal against  
 persons or property or (ii) where  
 antitrust immunity is not provided  
 under federal or state law;

2. To reduce, limit or eliminate the  
 supply of seafood, directly or indirectly,  
 either (i) through coercion or  
 intimidation, or threats of coercion or  
 intimidation, including, but not limited  
 to, the use or threat of use of physical  
 force or reprisal against persons or  
 property or (ii) where antitrust  
 immunity is not provided under federal  
 or state law; and

3. To impede, obstruct, or prevent any  
 person from processing, purchasing or  
 selling or offering to purchase or sell  
 seafood, directly or indirectly, either (i)  
 through coercion or intimidation, or  
 threats of coercion or intimidation,  
 including, but not limited to, the use or  
 threat of use of physical force or reprisal  
 against persons or property or (ii) where  
 antitrust immunity is not provided  
 under federal or state law.

B. Defendants are also enjoined from  
 compelling any fisherman or other  
 person to become a member of, or to  
 participate in the activities of, any  
 association through coercion or  
 intimidation, or threats of coercion or  
 intimidation, including, but not limited  
 to, the use or threat of physical force or  
 reprisal against persons or property.

C. This Consent Decree shall not be  
 interpreted to limit or constrict any  
 rights to form or participate as a member  
 in activities of a fishermen's marketing  
 association granted to defendants by the  
 Fishermen's Collective Marketing Act  
 (15 U.S.C. § 521) or other similar state  
 statutes. Oregon law shall be interpreted  
 to permit defendants to engage in

fishermen marketing association activities which are immune or exempt from antitrust liability under 15 U.S.C. § 521, unless and until the Oregon legislature amends any existing law or passes any new law that provides a different standard of immunity or exemption than what is provided under 15 U.S.C. § 521.

#### V. Payment to States

A. In settlement of all of plaintiffs' claims set forth in the complaint, and pursuant to ORS 646.760 and ORS 180.095, RCW 19.86.080 and 19.86.090, and Cal Prof. & Bus. Code 16750, defendants agree to pay to the Oregon Department of Justice the total sum of Ninety Thousand Eight Hundred Seventy Four dollars (\$90,874.00) in this matter for reimbursement of attorneys fees and investigative costs incurred herein.

B. The plaintiffs' apportioned shares of defendants' payments and the use of such shares shall be determined exclusively by the plaintiffs. Oregon's share of said payments shall be deposited into the Oregon Department of Justice Consumer Protection and Education Revolving Account and shall be used as provided by Oregon law.

C. Payments shall be made by certified check and made payable to the Oregon Department of Justice in accordance with the schedules set forth in the Settlement Agreement between the parties to this Consent Decree.

#### VI. Securing Compliance With Consent Decree

For the purpose of securing compliance with this Consent Decree defendants shall fully and completely cooperate in any future investigation for violations of this Consent Decree or any matters related to this Decree in accordance with the following conditions:

A. Any information provided to plaintiffs under this Consent Decree shall be kept confidential by plaintiffs and shall not be disclosed to third parties except as necessary to enforce the Consent Decree, as otherwise previously agreed, and/or as permitted or required under applicable state or federal law.

B. The defendants shall have the right to be represented by counsel in any process permitted by this Consent Decree section, including those described in Paragraph C.

C. Subject to any legally recognized privilege, the defendants agree that duly authorized representatives of plaintiffs shall, on written request and on reasonable notice to Defendant, be permitted:

1. Access during the office hours of the defendant to inspect any copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession, custody or control of such defendant relating to any matters contained in this Consent Decree; and

2. To interview defendant or any employee or agent of defendants regarding any matters contained in this Consent Decree, under oath if requested, subject to reasonable convenience of the defendant and without restraint or interference from defendant.

D. Subject to any legally recognized privilege, the defendants further agree that upon written request from duly authorized representatives of the plaintiffs to a defendant, defendant shall submit written reports, under oath if requested, with respect to any of the matters contained in the Consent Decree.

#### VII. Violations of Consent Decree

A. In the event that one or more of the plaintiffs believe that one or more of the Defendants have violated any provisions of this Consent Decree, plaintiffs, either jointly or individually, may move the Court for an Order for Show Cause for violation of this Consent Decree, based upon affidavits stating factual grounds, after notice by regular mail to the last known address of the defendants allegedly involved and to their attorneys of record.

B. After a hearing at which defendants involved shall have a reasonable opportunity to present evidence and legal argument, the Court may enter an order which, among other remedies, may require each defendant involved to pay a penalty to the moving plaintiffs of up to fifteen thousand dollars (\$15,000) per violation and any other sanction the Court deems appropriate.

C. Upon a defendant's failure to pay the penalty provided in this section, or for any other violation of this Consent Decree, the moving plaintiffs, either jointly or individually, may exercise all remedies available at law or in equity, including plaintiff United States seeking an order of criminal contempt.

#### VIII. Enforcement of Consent Decree

A. Plaintiffs shall have concurrent authority to enforce any provision of this Consent Decree against any party to this Consent Decree.

B. The authority to enforce this Consent Decree shall be in addition to any other enforcement action authority plaintiffs may have in prosecuting new violations of state or federal antitrust laws.

C. Nothing contained in this Consent Decree shall limit the rights of the United States from utilizing other investigative alternatives, such as the Civil Investigative Demand process provided by 15 U.S.C. § 1311 and § 1314, or a federal grand jury. Nothing contained in this Consent Decree shall limit the rights of the States of Oregon, California and Washington from utilizing other investigative alternatives, such as their civil investigative authority and, if applicable, their grand jury authority.

#### IX. Retention of Jurisdiction

Jurisdiction shall be retained by the United States District Court for the District of Oregon to enable any party to apply for further orders and directions as are necessary and appropriate for enforcement, compliance, construction, or modification of this Consent Decree.

#### X. Scope of Consent Decree

This Consent Decree and the Settlement Agreement represent the complete agreement of the parties. Nothing in this Consent Decree or the Settlement Agreement shall give standing to any person not a party to this Consent Decree to seek any relief related to it.

#### XI. Length of Consent Decree

This Consent Decree shall be in full force and effect for a period of five (5) years following entry of this decree.

#### XII. Public Interest

Entry of this Consent Decree is in the public interest. Except as provided in this Consent Decree for future action taken pursuant to Section IX, this proceeding in all other respect is hereby dismissed with prejudice with respect to defendants.

Approved and Ordered this \_\_\_\_ day of \_\_\_\_\_, 1997.

United States District Court Judge

Presented by:

Andrew E. Aubertine,  
Assistant Attorney General, Oregon  
Department of Justice, 1162 Court Street, NE,  
Salem, Oregon 97310, (503) 378-4732, OSB#  
83013.

Liaison Counsel for Plaintiffs

Hardy Myers  
Attorney General  
Andrew E. Aubertine,  
Assistant Attorney General, Oregon  
Department of Justice, 1162 Court Street  
NE, Salem, Oregon 97310, (503) 378-  
4732, OSB #83013.

Liaison counsel for all plaintiffs identified on attached signature pages.

In the United States District Court for the District of Oregon

State of Oregon, *ex rel.*, Attorney General Hardy Myers, State of Washington, *ex rel.*, Attorney General Christine O. Gregoire, State of California, *ex rel.*, Attorney General Daniel Lungren, and United States of America, Plaintiffs, v. Jeff Mulkey, Jerry Hampel, Todd Whaley, Brad Pettinger, Joseph Speir, Thomas Timmer, Richard Sheldon, Dennis Sturgell, Allen Gann and Russell Smotherman, Defendants. Civil Action, No. 97-234MA, Consent Decree—Judge Malcom Marsh.

Plaintiffs, through their respective attorneys, and defendants, through their respective attorneys or appearing pro se, have stipulated to entry of this Consent Decree in accordance with the terms of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 and that this Consent decree shall be a consent judgment as the term is used in 15 U.S.C. § 16(a).

Whereas: Plaintiffs, State of Oregon, State of Washington, State of California, and the United States Department of Justice through their respective attorneys, filed their complaint on February 11, 1997, alleging a violation of the Sherman Act, 15 U.S.C. § 1 and counterpart state statutes, Oregon Revised Statutes 646.725; Revised Code of Washington § 19.86.030, and California Professional & Business Code §§ 16720-16770;

Whereas: Defendants Jeff Mulkey, Jerry Hampel, Todd Whaley, Brad Pettinger, Joseph Speir, Thomas Timmer, Richard Sheldon, Dennis Sturgell, Allen Gann and Russell Smotherman deny any liability with respect to all matters which are the subject of the complaint;

Whereas: There has been no determination by the Court that a violation of law occurred;

Whereas: The plaintiffs and defendants desire to resolve their dispute without adjudication of any issue of law or fact; and

Whereas: The Consent Decree shall not be evidence against nor an admission by any party with respect to any issue of law or fact;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of law or fact herein, and upon the consent of the parties hereto, it is hereby ordered, adjudged and decreed as follows:

### *I. Jurisdiction*

This Court has jurisdiction over the subject matter herein and each of the parties consenting hereto. This Court has jurisdiction over Counts I through VIII of the Complaint pursuant to 15 U.S.C. § 4, 15 U.S.C. § 26, and 28 U.S.C. § 1367(a). The Complaint states claims

upon which relief may be granted against defendants under 15 U.S.C. § 1 and related pendent state antitrust claims under ORS 646.725, 646.760 and 646.770; RCW § 19.86.030; and Cal Prof & Bus. Code §§ 16720-16770.

### *II. Definitions*

As used in this Consent Decree:

A. "Association" means any group of fishermen organized under the Fisherman's Collective Marketing Act, 15 U.S.C. § 521 or under the companion laws of the State of California, Cal. Corp. Code § 130.26, the State of Washington, RCW § 24.36, and/or the State of Oregon.

B. "Commercial Seafood Fishermen" means fishermen who fish for and catch seafood products and sell the seafood products to purchasers.

C. "Ex-vessel price" means the price paid by purchasers to fishermen for seafood products.

D. "Person" means any individual, sole proprietorship, partnership, firm, corporation or any other legal or business entity.

E. "Purchasers" mean commercial seafood processors, commercial seafood canneries, retail stores and/or restaurants.

F. "Seafood" and "Seafood Products" mean crab, crab meat, and any and all other crab products, whether fresh, raw, cooked, frozen, canned, or otherwise preserved or prepared for consumption.

### *III. Applicability*

The provisions of this Consent Decree shall apply to plaintiffs and defendants and to all of defendants' managers, agents, employees, affiliates, and to those persons in active concert or participation with them who receive actual notice of this Consent Decree by personal service or otherwise.

### *IV. Injunction*

A. Defendants are enjoined from forming or participating in, or continuing to participating in any agreement, plan, scheme, arrangement or undertaking, with any other commercial seafood fisherman, the purpose or effect of which is:

1. To set, fix or stabilize the ex-vessel price of seafood or any price terms or conditions for the sale of seafood, directly or indirectly, either (i) through coercion or intimidation, or threats of coercion or intimidation, including, but not limited to, the use or threat of use of physical force or reprisal against persons or property or (ii) where antitrust immunity is not provided under federal or state law;

2. To reduce, limit or eliminate the supply of seafood, directly or indirectly,

either (i) through coercion or intimidation, or threats of coercion or intimidation, including, but not limited to, the use or threat of use of physical force or reprisal against persons or property or (ii) where antitrust immunity is not provided under federal or state law; and

3. To impede, obstruct, or prevent any person from processing, purchasing or selling or offering to purchase or sell seafood, directly or indirectly, either (i) through coercion or intimidation, or threats of coercion or intimidation, including, but not limited to, the use of threat of use of physical force or reprisal against persons or property or (ii) where antitrust immunity is not provided under federal or state law.

B. Defendants are also enjoined from compelling any fisherman or other person to become a member of, or to participate in the activities of, any association through coercion or intimidation, or threats of coercion or intimidation, including, but not limited to, the use of threat of physical force or reprisal against persons or property.

C. This Consent Decree shall not be interpreted to limit or constrict any rights to form or participate as a member in activities of a fishermen's marketing association granted to defendants by the Fishermen's Collective Marketing Act (15 U.S.C. § 521) or other similar state statutes. Oregon law shall be interpreted to permit defendants to engage in fishermen marketing association activities which are immune or exempt from antitrust liability under 15 U.S.C. § 521, unless and until the Oregon legislature amends any existing law or passes any new law that provides a different standard of immunity or exemption that what is provided under 15 U.S.C. § 521.

### *V. Payment to States*

A. In settlement of all of plaintiffs' claims set forth in the complaint, and pursuant to ORS 646.760 and ORS 180.095, RCW 19.86.080 and 19.86.090, and Cal Prof. & Bus. Code 16750, defendants agree to pay to the Oregon Department of Justice the total sum of Ninety Thousand Eight Hundred Seventy Four dollars (\$90,874.00) in this matter for reimbursement of attorneys fees and investigative costs incurred herein.

B. The plaintiffs' apportioned shares of defendants' payments and the use of such shares be determined exclusively by the plaintiffs. Oregon's share of said payments shall be deposited into the Oregon Department of Justice Consumer Protection and Education Revolving Account and shall be used as provided by Oregon law.

C. Payments shall be made by certified check and made payable to the Oregon Department of Justice in accordance with the schedules set forth in the Settlement Agreement between the parties to this Consent Decree.

#### VI. Securing Compliance With Consent Decree

For the purpose of securing compliance with this Consent Decree defendants shall fully and completely cooperate in any future investigation for violations of this Consent Decree or any matters related to this Decree in accordance with the following conditions.

A. Any information provided to plaintiffs under this Consent Decree shall be kept confidential by plaintiffs and shall not be disclosed to third parties except as necessary to enforce the Consent Decree, as otherwise previously agreed, and/or as permitted or required under applicable state or federal law.

B. The defendants shall have the right to be represented by counsel in any process permitted by this Consent Decree section, including those described in Paragraph C.

C. Subject to any legally recognized privilege, the defendants agree that duly authorized representatives of plaintiffs shall, on written request and on reasonable notice to Defendant, be permitted:

1. Access during the office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession, custody or control of such defendant relating to any matters contained in this Consent Decree; and

2. To interview defendant or any employee or agent of defendants regarding any matters contained in this Consent Decree, under oath if requested, subject to reasonable convenience of the defendant and without restraint or interference from defendant.

D. Subject to any legally recognized privilege, the defendants further agree that upon written request from duly authorized representatives of the plaintiffs to a defendant, defendant shall submit written reports, under oath if requested, with respect to any of the matters contained in the Consent Decree.

#### VII. Violations of Consent Decree

A. In the event that one or more of the plaintiffs believe that one or more of the Defendants have violated any provisions of this Consent Decree, plaintiffs, either jointly or individually, may move the Court for an Order for Show Cause for

violation of this Consent Decree, based upon affidavits starting factual grounds, after notice by regular mail to the last known address of the defendants allegedly involved and to their attorneys of record.

B. After a hearing at which defendants involved shall have a reasonable opportunity to present evidence and legal argument, the Court may enter an order which, among other remedies, may require each defendant involved to pay a penalty to the moving plaintiffs of up to fifteen thousand dollars (\$15,000) per violation and any other sanction the Court deems appropriate.

C. Upon a defendant's failure to pay the penalty provided in this section, or for any other violation of this Consent Decree, the moving plaintiffs, either jointly or individually, may exercise all remedies available at law or in equity, including plaintiff United States seeking an order of criminal contempt.

#### VIII. Enforcement of Consent Decree

A. Plaintiffs shall have concurrent authority to enforce any provision of this Consent Decree against any party to this Consent Decree.

B. The authority to enforce this Consent Decree shall be in addition to any other enforcement action authority plaintiffs may have in prosecuting new violations of state or federal antitrust laws.

C. Nothing contained in this Consent Decree shall limit the rights of the United States from utilizing other investigative alternatives, such as the Civil Investigative Demand process provided by 15 U.S.C. § 1311 and § 1314, or a federal grand jury. Nothing contained in this Consent Decree shall limit the rights of the States of Oregon, California and Washington from utilizing other investigative alternatives, such as their civil investigation authority and, if applicable, their grand jury authority.

#### IX. Retention of Jurisdiction

Jurisdiction shall be retained by the United States District Court for the District of Oregon to enable any party to apply for further orders and directions as are necessary and appropriate for enforcement, compliance, construction, or modification of this Consent Decree.

#### X. Scope of Consent Decree

This Consent Decree and the Settlement Agreement represent the complete agreement of the parties. Nothing in this Consent Decree or the Settlement Agreement shall give standing to any person not a party to this Consent Decree to seek any relief related to it.

#### XI. Length of Consent Decree

This Consent Decree shall be in full force and effect for a period of five (5) years following entry of this decree.

#### XII. Public Interest

Entry of this Consent Decree is in the public interest. Except as provided in this Consent Decree for future action taken pursuant to Section IX, this proceeding in all other respects is hereby dismissed with prejudice with respect to defendants.

Approved and Ordered this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

United States District Court Judge

Presented by:  
Andrew E. Aubertine,  
Assistant Attorney General, Oregon  
Department of Justice, 1162 Court Street,  
NE, Salem, Oregon 97310, (503) 378-  
4732, OSB# 83013.

Liaison Counsel for Plaintiffs

Richard B. Cohn,  
Antitrust Division, U.S. Department of  
Justice, 450 Golden Gate Avenue, Box  
36046, Room 10-0101, San Francisco,  
California 94102, Telephone: (415) 436-  
6660, Cal. Bar #: 79601.

Attorney for the United States

In the United States District Court for  
the District of Oregon

State of Oregon, *ex rel.*, Attorney General  
Hardy Myers, State of Washington, *ex rel.*,  
Attorney General Christine O. Gregorie, State  
of California, *ex rel.*, Attorney General Daniel  
Lungren, United States of America, Plaintiffs,  
*v.* Jeff Mulkey, Jerry Hampel, Todd Whaley,  
Brad Pettinger, Joseph Speir, Thomas  
Timmer, Richard Sheldon, Dennis Sturgell,  
Allan Gann and Russell Smotherman,  
Defendants. Civil Action No. 97-234MA,  
Competitive Impact Statement—Antitrust.  
Filed: February 11, 1997, Judge Malcom  
Marsh

#### Competitive Impact Statement

Pursuant to the Antitrust Procedures  
and Penalties Act, 15 U.S.C. § 16(b)-(h),  
the United States files this Competitive  
Impact Statement relating to the  
proposed Consent Decree submitted for  
entry in this civil antitrust proceeding.

I

#### Nature and Purpose of the Proceeding

The United States and the states of  
Oregon, California, and Washington  
have filed a civil antitrust suit alleging  
that ten (10) commercial crab fisherman  
and various unnamed co-conspirators  
conspired to restrain competition among  
commercial fishermen in violation of § 1  
of the Sherman Act, 15 U.S.C. § 1. The  
Complaint asks the Court to find that  
the defendant fishermen have violated  
§ 1 of the Sherman Act, requests that the  
defendants pay civil penalties and the

costs of the investigation to the plaintiff states and further requests the Court to enjoin the continuance of the alleged unlawful acts.

Entry of the proposed Consent Decree will terminate the action, except that the Court will retain jurisdiction over the matter for further proceedings which may be required to interpret, enforce or modify the Consent Decree or to punish violations of any of its provisions.

## II

### *Practices Giving Rise to the Alleged Violation*

The defendants are commercial crab fishermen who fish in waters off the coasts of California, Oregon, and Washington.

The Oregon defendant fisherman are not members of a fishermen's marketing association. They are thus not entitled to the exemption given to fishermen's marketing associations by the Fishermen's Collective Marketing Act of 1934 ("FCMA"), 15 U.S.C. §§ 521-522. The exemptions provided by the FCMA do not apply to fishermen who do not belong to fish marketing associations formed pursuant to the FCMA or to FCMA association members who enter into marketing agreements with non-FCMA association fishermen. Price fixing and horizontal boycott agreements which are not protected by the FCMA are *per se* violations of § 1 of the Sherman Act (15 U.S.C. § 1) and are subject to criminal prosecution by the United States Department of Justice. The United States chose not to proceed criminally in this matter because most of the defendants mistakenly believed their conduct was protected by the FCMA from prosecution under the Sherman Act.

The United States and the states of Oregon, California, and Washington contend and were prepared to show at trial, that beginning in or about December 1995 and continuing up until at least January 1996, the defendants were leaders in a conspiracy with unnamed co-conspirators to restrain competition among commercial crab fishermen in violation of § 1 of the Sherman Act. The conspiracy consisted of an agreement and concert of action between the defendants and co-conspirators to fix the "ex vessel" price (price at which fishermen sell their catch to purchasers such as processors) at a minimum of \$1.25 per pound and to eliminate competition among commercial fishermen in the sale of crab. In furtherance of this conspiracy the defendants and co-conspirators: (1) Agreed to sell crab at a minimum "ex vessel" price of \$1.25 per pound; (2)

agreed not to fish for crab until all purchasers operating in the major West Coast crab fishing ports had agreed to pay a minimum "ex vessel" price of \$1.25 per pound; and (3) compelled, through threats of physical and economic harm, harassment and other forms of intimidation, other fishermen not to fish for crabs until all the purchasers agreed to pay a minimum \$1.25 "ex-vessel" price.

This conspiracy fixed the "ex vessel" price of crab sold by commercial fishermen, eliminated price and other forms of competition among commercial fishermen in the sale of crab and deprived purchasers of commercial crab of the benefits of free and open competition in the sale of crab.

## III

### *Explanation of the Proposed Consent Decree*

The United States and the defendants have stipulated that the Court may enter the proposed Consent Decree after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (b)-(h). The proposed Consent Decree 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 Consent Decree may not be entered unless the Court finds that entry is in the public interest. Section XII of the proposed Consent Decree sets forth such a finding.

The proposed Consent Decree is intended to ensure that the defendants discontinue all practices which restrain competition among commercial fishermen.

#### *A. Prohibitions and Obligations*

Under Section IV of the proposed Consent Decree, the defendants are enjoined from participating in any discussion, communication or agreement, except as members of FCMA fishermen's marketing associations interacting with other members of such associations, regarding: (1) The "ex vessel" prices to be negotiated between purchasers and the defendants; (2) any terms or conditions to be offered for the sale of seafood; or (3) refraining from fishing while commercial fishermen are negotiating with purchasers on an "ex vessel" price. Section IV also enjoins the defendants from requesting or coercing other fishermen to refrain from fishing or to sell fish to processors at specified prices or under specified terms or conditions. The defendants are

also enjoined from any interference with any other commercial fishermen's business through threats or other means of intimidation. The Consent Decree further enjoins the defendants from impeding, obstructing, or preventing any person from processing, purchasing, or selling or offering to purchase or sell crab or any other seafood. Finally, the Consent Decree restrains the defendants from compelling any fishermen or other person to become a member, or to participate in the activities, of any association.

Section V. of the Consent Decree requires the defendants to pay the states of Oregon, California and Washington pursuant to ORS 646.760 and ORS 180.095, RCW 19.86.080 and 19.86.090, and Cal. Prof. & Bus. Code 16760 \$90,874.00 for civil penalties and reimbursement of attorney fees and investigative costs.

#### *B. Scope of the Proposed Consent Decree*

Section XI. of the proposed Consent Decree provides that the Consent Decree shall remain in effect for five years.

Section III. of the proposed Consent Decree provides that the Consent Decree shall apply to the defendants and all of their managers, agents, employees, affiliates, successors and assigns, and to those persons in active concert or participation with any of them who shall have received actual notice of the Consent Decree.

#### *C. Effect of the Proposed Consent Decree on Competition*

The relief set out in the proposed Consent Decree is designed to prevent recurrence of the activities alleged in the Complaint. The proposed Consent Decree's provisions are intended to ensure that commercial crab fishermen act independently, except as members of a FCMA fish marketing association interacting with other association members, in any marketing or pricing decisions and that they not interfere with the marketing and price decisions of other commercial crab fishermen.

## IV

### *Alternatives to the Proposed Consent Decree*

The alternative to the proposed Consent Decree would be a full trial of the case. In the view of the Department of Justice and the states of Oregon, California and Washington, such a trial would involve substantial cost to the plaintiffs and is not warranted since the proposed Consent Decree provides almost all the relief sought in the Complaint.

## V

*Remedies Available to 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 fees. Under the provisions of Section 5(a) (15 U.S.C. § 16(a)), this Consent Decree has no *prima facie* effect in the lawsuits which may be brought against the defendants.

## VI

*Procedures Available for Modification of the Proposed Consent Decree*

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Consent Decree should be modified may submit written comments to Christopher S. Crook, Acting Chief, San Francisco Office, U.S. Department of Justice, Antitrust Division, 450 Golden Gate Avenue, Box 36046, Room 10-0101, San Francisco, California 94012, within the 60-day period provided by the Act. The comments and the Government's responses to them 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 Consent Decree at any time period to its entry if it should determine that some modification of the Consent Decree is necessary to the public interest. The proposed Consent Decree itself provides that the Court will retain jurisdiction over this action, and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification or enforcement of the Consent Decree.

## VII

*Determinative Documents*

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)) were considered in formulating this proposed Consent Decree. Consequently, none are filed herewith.

Dated: February 6, 1997.

Christopher S. Crook,  
Richard B. Cohen,

*Attorneys, Antitrust Division, U.S.  
Department of Justice.*

[FR Doc. 97-4389 Filed 2-21-97; 8:45 am]

BILLING CODE 4410-11-M

**Antitrust Division****U.S. v. US WEST, Inc. and Continental Cablevision, Inc.; Public Comments and Response on Proposed Final Judgment**

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(c)-(h), the United States publishes below the comments received on the proposed final judgment in *U.S. v. US WEST, Inc. and Continental Cablevision, Inc.*, Civil Action No. 96-2529 TPS, filed in the United States District Court for the District of Columbia, together with the United States' response to that comment.

Copies of the comments and response to the comments are available for inspection and copying in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Washington, D.C. 20530 (telephone: (202) 514-2481), and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained upon request and payment of a copying fee. Constance K. Robinson,  
*Director of Operations.*

In The United States District Court for The District of Columbia

*United States of America*, Plaintiff, v. *US West, Inc. and Continental Cablevision, Inc.*, Defendants.

**[No. 96-2529 TPS (Antitrust)]**

Comments Relating to Proposed Final Judgment and Response of The United States to Comments

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)-(h)) ("APPA"), the United States of America hereby files the public comments it has received relating to the proposed Final Judgment in this civil antitrust proceeding, and herein responds to the public comments. The United States has carefully reviewed the public comments on the proposed Final Judgment and remains convinced that entry of the proposed Final Judgment is in the public interest.

**I.—Background**

This action was commenced on November 5, 1996, when the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, alleging that the proposed acquisition of Continental Cablevision, Inc. ("Continental") by US WEST, Inc. ("US WEST"), would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. US WEST is the dominant provider of local

telecommunications services, including dedicated services, within its telephone service area in the States of Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. At the time the acquisition was announced, Continental owned 20% of Teleport Communications Group, Inc. ("TCG"), a competitive access provider ("CAP") providing dedicated services in various cities across the nation, including Denver, Omaha, Phoenix and Seattle. The complaint alleges that US WEST's acquisition of Continental's interest in TCG would substantially lessen competition in the sale of dedicated services in the areas within Denver, Omaha, Phoenix and Seattle in which TCG provides such services.

Contemporaneously with filing its Complaint, the United States submitted a proposed Final Judgment, a Competitive Impact Statement and a Stipulation signed by the defendants consenting to entry of the proposed Final Judgment. The proposed Final Judgment orders US WEST to divest the TCG Common Stock by certain specified dates and contains other provisions designed to bar US WEST's access to highly sensitive TCG business information, and to treat TCG as a passive business investment. The Competitive Impact Statement explains the basis for the Complaint and the reasons why entry of the proposed Final Judgment would be in the public interest. In the Stipulation, the defendants and the United States consented to entry of the proposed Final Judgment by the Court after completion of the procedures required by the APPA.

**II.—Compliance With the APPA**

The APPA requires a sixty-day period for the submission of public comments on the proposed Final Judgment, 15 U.S.C. 16(b). In this case, the sixty-day comment period commenced on November 18, 1996, and terminated on January 16, 1997. During this period, the United States received only one comment relating to the proposed Final Judgment.<sup>1</sup> The United States herein responds to this comment. Upon publication of this comment and the following response of the United States to this comment in the Federal Register pursuant to 15 U.S.C. 16(d) of the APPA, the procedures required by the APPA prior to entry of the proposed Final Judgment will be completed, and the Court may enter the proposed Final

<sup>1</sup> This comment is attached hereto as Exhibit A.