

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)	Criminal No. 03-654
)	
v.)	Violation: 15 U.S.C. § 1
)	
ODFJELL SEACHEM AS,)	Filed: September 29, 2003
)	
Defendant.)	
_____)	

GOVERNMENT’S RULE 11 MEMORANDUM

The United States and Odfjell Seachem AS (“Odfjell”) have entered into a plea agreement pursuant to which Odfjell will waive indictment and plead guilty to the captioned Information which charges Odfjell with a violation of the Sherman Act, 15 U.S.C. § 1. The purpose of this memorandum is to provide the Court with sufficient information to accept the plea by setting forth the violated statute, a description of the criminal Information, the terms of the Plea Agreement, and a preliminary statement of facts which supports the Agreement.

I
STATUTE VIOLATED

A. 15 U.S.C. Section 1

Section One of Title 15, United States Code, provides:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by a fine not exceeding \$10,000,000 if a corporation, or, if any other person, \$350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

B. The Information

The Information charges Odfjell with participating in a conspiracy to suppress and eliminate competition by allocating customers, fixing prices and rigging bids for contracts of affreightment for parcel tanker shipping of products to and from the United States and elsewhere beginning at least as early as August 1998 and continuing until as late as November 2002, in unreasonable restraint of interstate and foreign trade and commerce in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

C. Elements of the Offense (15 U.S.C. Section 1)

The elements of a Sherman Act offense, each of which the United States must prove beyond a reasonable doubt at trial, are:

- (1) the conspiracy charged was formed, and it was in existence at or about the time alleged;
- (2) the defendant knowingly formed or participated in that conspiracy; and
- (3) the activity which was the object of the conspiracy was within the flow of, or substantially affected, interstate or foreign commerce.

D. Maximum Penalty

The maximum penalty Odfjell may receive upon its conviction in this case is a fine in an amount equal to the largest of: (a) \$10 million; (b) twice the gross pecuniary gain derived from the crime; or (c) twice the gross pecuniary loss caused to the victims of the crime.

II
FACTUAL BASIS

This statement of facts is intended to be used as a factual basis for the guilty plea of Odfjell to the Information. It is not intended to be exhaustive in terms of details surrounding the

charged conspiracy.

A. Background

Parcel tanker shipping is the ocean transport of bulk liquid chemicals, edible oils, acids and other specialty liquids. Parcel tankers are deep sea vessels equipped with compartments designed to carry shipments of various sizes. The temperature and other specifications of the compartments can be regulated according to the specific requirements of the type of liquid being transported.

B. The Charged Conspiracy

During the relevant period, the defendant was a corporation organized and existing under the laws of Norway with its principal place of business in Bergen, Norway. During the relevant period, the defendant was a provider of parcel tanker shipping services and was engaged in parcel tanker shipping of products to and from the United States and elsewhere.

As alleged in the Information, beginning at least as early as August 1998 and continuing until as late as November 2002, the defendant, through its agents, officers and employees, participated in a conspiracy among major providers of parcel tanker shipping, the substantial terms of which were to allocate customers, rig bids and fix prices for contracts of affreightment for parcel tanker shipping of products to and from the United States and elsewhere. A contract of affreightment is a contract between a customer and a parcel tanker shipping company for the transportation of bulk liquids from one port to another. A contract of affreightment typically covers multiple shipments during a certain time period and specifies the price, cargo, destinations and other terms and conditions.

During the charged period and in furtherance of the conspiracy, the defendant, through its

agents, officers and employees, and defendant's co-conspirators attended meetings and engaged in discussions in the United States and Europe concerning customers for contracts of affreightment and prices of parcel tanker shipping of products to and from the United States and elsewhere. The defendant and co-conspirators agreed during those meetings and discussions to allocate customers and to create and exchange customer lists in order to implement and monitor this agreement. The defendant and co-conspirators agreed during those meetings and discussions not to compete for one another's customers either by not submitting prices or bids to certain customers, or by submitting intentionally high prices or bids to certain customers. Defendant and co-conspirators discussed and exchanged prices to certain customers so as not to undercut one another's prices.

C. Interstate and Foreign Commerce

At all times during the conspiracy, products shipped by defendant, and parcel tanker shipping vessels, equipment and supplies necessary to providing such parcel tanker shipping, as well as payments for such parcel tanker shipping, traveled in interstate and foreign commerce. The activities of the defendant and its co-conspirators in connection with the parcel tanker shipping services affected by this conspiracy were within the flow of, and substantially affected, interstate and foreign trade and commerce.

III
PLEA AGREEMENT

Odfjell's guilty plea to the Information will be entered pursuant to the Plea Agreement between Odfjell and the Antitrust Division. The Plea Agreement provides that Odfjell will enter a plea of guilty pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure.

Also pursuant to the Plea Agreement, the United States and Odfjell agree to jointly

recommend that the Court impose a sentence requiring Odfjell to pay a fine to the United States in the amount of \$42.5 million as the appropriate disposition of the case. The fine is payable in the following 6 installments over a period of five years:

- (1) Within ninety (90) days of imposition of sentence – \$4.3 Million
- (2) At the one-year anniversary – \$4.3 Million
- (3) At the two-year anniversary – \$8.6 Million
- (4) At the three-year anniversary – \$8.6 Million
- (5) At the four-year anniversary – \$8.6 Million
- (6) At the five-year anniversary – \$8.1 Million

Although the United States Sentencing Guidelines fine range exceeds the agreed-upon fine, subject to the full and continuing cooperation of the defendant as described in Paragraph 13 of its Plea Agreement, and prior to sentencing in this case, the United States agrees that it will make a motion, pursuant to U.S.S.G. § 8C4.1, for a downward departure from the guidelines fine range and will request that the Court impose the recommended sentence because of the defendant's substantial assistance in the government's investigation and prosecutions of violations of federal criminal law in the parcel tanker shipping industry.

Subject to the ongoing, full, and truthful cooperation of the defendant, and before sentencing in the case, the United States will fully advise the Court and the Probation Office of the fact, manner, and extent of the defendant's cooperation and its commitment to prospective cooperation with the United States' investigation and prosecutions, all material facts relating to the defendant's involvement in the charged offense, and all other relevant conduct.

Odfjell has agreed to accept the imposition of a period of probation that coincides with

the fine payment schedule set forth above. The United States and Odfjell will also jointly request that the Court accept Odfjell's guilty plea and immediately impose sentence on the day of arraignment. Should the Court reject the agreed-upon disposition of the case, Odfjell will be free to withdraw its plea.

Odfjell and its parent, subsidiaries and its parent's subsidiaries which are engaged in parcel tanker shipping (collectively, "related entities") have agreed to cooperate fully with the United States in the conduct of the present investigation of the parcel tanker shipping industry and any litigation or other proceedings resulting therefrom to which the United States is a party. Such cooperation includes, but is not limited to, the production of relevant documents under the control of Odfjell and its related entities, and securing the cooperation of its officers, directors and employees.

The United States has also filed two other Informations charging Bjorn Sjaastad, Chairman of the defendant, and Erik Nilsen, Vice President of the defendant, with participating in a conspiracy to allocate customers, rig bids and fix prices for contracts of affreightment for parcel tanker shipping of products to and from the United States and elsewhere. They have each entered into Plea Agreements in which they have agreed to plead guilty to those charges.

Pursuant to the Plea Agreement in this case, the United States agrees, upon entry and acceptance of the guilty pleas of Bjorn Sjaastad and Erik Nilsen, and subject to the continuing full cooperation of Odfjell and its related entities, not to bring further criminal proceedings against Odfjell or its related entities for any act or offense committed prior to December 2002 that was undertaken in furtherance of an antitrust conspiracy involving parcel tanker shipping. Subject to their continuing cooperation, certain current or former directors, officers,

and employees of Odfjell and its related entities identified by the United States will receive the same non-prosecution protection.

Dated: September 29, 2003

Respectfully submitted,

_____/S/_____
ROBERT E. CONNOLLY
Chief

_____/S/_____
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CERTIFICATE OF SERVICE

This is to certify that on the 29th day of September 2003, a copy of the Government's Rule 11 Memorandum has been sent via telefax to counsel of record for the defendant as follows:

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