

IN THE MATTER OF
COLUMBIA RIVER PILOTS

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3854. Complaint, March 1, 1999--Decision, March 1, 1999

This consent order, among other things, prohibits Columbia River Pilots ("COLRIP"), an association of marine pilots in Oregon, from imposing any restrictions or penalties on its members who leave the association to compete with COLRIP, unless the pilots have been members of COLRIP for less than five years or have failed to give COLRIP 90 days notice of their intention to leave. The consent order also prohibits the respondent from allocating customers with any competing pilotage group, limiting any competing pilotage group's size, or restricting exclusive dealing contracts or rate proposals. In addition, the consent order requires the respondent to amend its constitution, bylaws and standard of conduct to conform to the requirements of this order.

Participants

For the Commission: *Shane Woods, John Kirkwood, Robert Schroeder, Charles Harwood, Anne Schenof, Roberta Baruch, William Baer, Denis Breen and John Simpson.*

For the respondent: *Kevin Davis, Portland, OR.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41, *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Columbia River Pilots (hereafter "respondent") has violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

PARAGRAPH 1. For purposes of this complaint, the following definitions shall apply:

(A) "*Columbia and Willamette River Pilotage Ground*" or "*the Grounds*" is one of the pilotage grounds designated by the State of Oregon, and refers specifically to the Columbia and Willamette Rivers and their tributaries from the lowermost dock or wharf at the Port of Astoria to the head of navigation.

(B) "*Marine pilot*" means an individual licensed by the State of Oregon to assist the master of a vessel on the Grounds.

PAR. 2. Respondent is an unincorporated association whose members are marine pilots or corporations owned by marine pilots. Respondent is organized and does business under the laws of the State of Oregon, and has its offices at 13225 N. Lombard, Portland, Oregon.

PAR. 3. Respondent is engaged in the business of facilitating the provision of services by marine pilots, including, but not limited to, dispatching marine pilots and collecting and distributing marine pilots' fees. In addition, respondent is licensed by the Oregon Board of Maritime Pilots to provide training to individuals seeking to become marine pilots.

PAR. 4. Respondent's acts and practices, including the acts and practices alleged herein, are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

MARINE PILOTAGE ON THE GROUNDS

PAR. 5. In order to operate on the Grounds, large commercial vessels engaged in foreign trade are required by the State of Oregon to obtain the assistance of a licensed marine pilot. To obtain a marine pilot's license for the Grounds, an individual is required by the State to complete a multi-year training program overseen by Oregon's Board of Maritime Pilots ("the Board") and administered by pilot organizations licensed by the Board to provide training. Oregon law limits the number of pilots but does not limit the number of pilot organizations licensed for the Grounds. Oregon law also expressly protects competition in marine pilotage by prohibiting the Board from passing any rule that significantly reduces competition among licensees or pilot organizations existing on January 1, 1991, without first finding the rule is essential to safety.

PAR. 6. The Board sets the fees that may be charged for pilotage services; and those fees, once set, are not subject to competition. Before the Board sets fees for pilotage, individuals and businesses providing, purchasing or otherwise having an interest in pilotage services may submit competing rate proposals for the Board to consider.

PAR. 7. Service competition among marine pilots may affect the cost of pilotage and shipping because marine pilots make decisions concerning, among other things, the number of tug boats used to move a vessel, the number of hours before and after high tide when a vessel may be moved, and the amount of product that may be loaded onto a vessel.

RESPONDENT'S MONOPOLY

PAR. 8. From approximately the 1950's to late 1989, and since late 1995, respondent has been the only pilot organization on the Grounds, and every marine pilot has been a member of respondent.

PILOTAGE COMPETITION ON THE GROUNDS

PAR. 9. On October 25, 1989, two of respondent's approximately 40 marine pilots resigned from respondent and formed Lewis & Clark Pilotage, Inc. ("L&C"). L&C signed an exclusive contract with ConAgra, Inc., the owner of one of the largest grain elevators on the West Coast. Vessels calling at ConAgra's facility accounted for about 10% of the pilotage revenues on the Grounds, approximately twice the revenues earned by L&C's pilots when they were with respondent.

PAR. 10. The competition produced by L&C's entry had immediate benefits for purchasers of pilotage services and purchasers of shipping services. Within months, L&C's improved service enabled ConAgra to increase the rate at which it funneled grain through its elevators by more than 10%.

PAR. 11. Respondent responded by adopting practices similar to those of L&C -- dispatching pilots more quickly, and moving longer and deeper vessels, under a broader range of conditions, with fewer tugs. These practices served to reduce shipping costs for respondent's customers.

RESPONDENT'S ACTIONS TO MAINTAIN ITS MONOPOLY

PAR. 12. After L&C's formation, respondent protected its near-monopoly by:

(a) Interpreting its existing pension plan to deny any accrued pension benefits to any member who resigns and then competes with respondent.

(b) Modifying its conditions for membership to require that any marine pilot resigning from respondent must refrain from piloting on

the Grounds for six months. Under Oregon law, the pilot then would be required to obtain additional training before resuming pilotage. At the time that respondent imposed this new condition, respondent was the dominant provider of such training.

(c) Modifying its conditions for membership to require that any member who resigns and then competes with respondent must pay respondent \$200,000.

(d) Supporting modification of the stock purchase agreement for a corporation whose shareholders are members of respondent to require that a pilot terminating his membership for any reason other than death, disability, or retirement forfeit his right to profit from any increased value of his stock in the corporation.

PAR. 13. The acts or practices described in paragraph twelve were not justified on efficiency grounds.

PAR. 14. L&C was unable to obtain significant business beyond its exclusive contract with ConAgra. On January 8, 1991, L&C filed an antitrust suit against respondent.

PAR. 15. On December 22, 1991, respondent and L&C settled their lawsuit. The settlement agreement substantially restored respondent's monopoly by prohibiting L&C from seeking or accepting business from any of respondent's existing customers, from hiring more than one additional marine pilot, from entering into any new exclusive dealing contracts, from proposing any dispatch or rotation rule without respondent's permission, and from proposing or supporting any rate structure that did not have the "essential features" of the existing rate structure.

PAR. 16. Respondent and L&C submitted the settlement agreement to the Oregon Board of Maritime Pilots for its approval. The Board neither approved nor disapproved of the settlement, nor did it make any findings concerning whether the settlement is essential to safety.

PAR. 17. Respondent's new rules protected respondent from additional competition, either from L&C or from any other pilot group, by imposing penalties so prohibitive that no other pilot would leave respondent to compete with it. The settlement agreement also significantly limited L&C's ability to compete. At the end of 1994, one of L&C's founders retired from pilotage, leaving L&C with one pilot. After L&C's remaining founder retired in 1995, L&C went out of business; and respondent regained its monopoly.

NATURE AND EFFECTS OF RESPONDENT'S CONDUCT

PAR. 18. By engaging in the acts and practices described in paragraph twelve, and by acting on its own and as a combination of and in conspiracy with its members, respondent has unreasonably restrained competition in and has monopolized the market for marine pilotage on the Columbia and Willamette River Pilotage Ground. Respondent's settlement agreement described in paragraph fifteen also constituted an agreement that unreasonably restrained competition on the Grounds.

PAR. 19. The purpose, effect, tendency or capacity of respondent's acts and practices described in paragraphs twelve and fifteen is and has been to monopolize the market for marine pilotage on the Grounds, to restrict competition in that market, and to make it more difficult for new competition to develop in that market, thus depriving consumers of more efficient and less expensive pilotage and shipping services.

PAR. 20. The conspiracies, acts and practices described in paragraphs twelve and fifteen constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. Such conspiracies, acts and practices, or the effects thereof, are occurring or may recur in the absence of the relief herein requested.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of respondent Columbia River Pilots ("COLRIP"), and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined it had reason to believe that the respondent has violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. COLRIP is an unincorporated association whose members are marine pilots or corporations owned by marine pilots. Respondent is organized and does business under the laws of the State of Oregon, and has its offices at 13225 N. Lombard, Portland, Oregon.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*COLRIP*" means Columbia River Pilots, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by COLRIP, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "*Commission*" means the Federal Trade Commission.

C. "*Columbia and Willamette River Pilotage Ground*" or "*the Grounds*" is one of the pilotage grounds designated by the State of Oregon, and refers specifically to the Columbia and Willamette Rivers and their tributaries from the lowermost dock or wharf at the Port of Astoria to the head of navigation.

D. "*Marine pilot*" means an individual licensed by the State of Oregon to assist the master of a vessel on the Grounds, but does not include a pilot trainee or apprentice.

II.

It is further ordered, That COLRIP, directly, indirectly, or through any corporate or other device, in connection with its activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44, cease and desist from:

A. Imposing any restrictions or penalties of any kind on COLRIP marine pilots who leave COLRIP, or who notify COLRIP of their intention of leaving COLRIP, to provide pilotage in competition with COLRIP; provided, however, that this subparagraph does not apply to restrictions or penalties on marine pilots who have been members of COLRIP for less than five (5) years, nor does this subparagraph apply to restrictions or penalties that are imposed on a marine pilot for failure to give at least ninety (90) days' advance notice of departure from COLRIP;

B. Entering into, or attempting to enter into, any agreement or understanding (other than agreements or understandings with COLRIP members, trainees or apprentices limited to performance of their pilotage duties with COLRIP and to the term of their membership, apprenticeship or training program with COLRIP), either express or implied, with any other provider or potential provider of marine pilotage on the Columbia and Willamette River Pilotage Ground:

(1) To divide, apportion or otherwise allocate customers, routes or any other aspect of the market for marine pilotage;

(2) To limit the number of marine pilots associated with any provider or potential provider of marine pilotage or otherwise restrict the amount of marine pilotage any provider or potential provider of marine pilotage may provide;

(3) To restrict the ability of any other provider or potential provider of marine pilotage to enter into exclusive dealing contracts with any customer; or

(4) To restrict the ability of any provider or potential provider of marine pilotage to submit proposals, recommendations or any other communication to the Oregon Board of Maritime Pilots.

III.

It is further ordered, That COLRIP shall, within sixty (60) days after the date on which this order becomes final, amend its constitution, bylaws, standards of conduct, codes of ethics, membership rules, and any other statements of policy or agreements, to conform to the requirements of paragraph II of this order.

IV.

It is further ordered, That COLRIP, directly, indirectly, or through any corporate or other device, in connection with its activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44, shall not prevent any COLRIP marine pilot from recommending or otherwise supporting an applicant for a Certificate as a Pilot Apprentice Trainee or an applicant for a marine pilot license. Nothing in this paragraph is intended to interfere with COLRIP's right to recommend certain applicants over others, nor to interfere with COLRIP's obligation as a training organization to evaluate the performance of apprentices and trainees and to make recommendations about licensure.

V.

It is further ordered, That COLRIP shall:

A. Within thirty (30) days after the date on which this order becomes final, distribute a copy of the complaint, the order, and the notice set out in Appendix A to the order, to each of its officers, members, marine pilot trainees, and employees, and a copy of the complaint, the order, and the notice set out in Appendix B to the order, to the Columbia River Steamship Operators Association; and

B. For a period of ten (10) years after the date on which this order becomes final, furnish a copy of the complaint, the order, and the notice set out in Appendix A to the order, to any new officers at the time they are elected, any new members at the time they become members, any new marine pilot trainees at the time they become trainees, and any new employees at the time they are hired.

VI.

It is further ordered, That COLRIP shall:

A. Sixty (60) days after the date on which this order becomes final, annually for the next ten (10) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, file a verified written report with the Commission setting forth in detail the manner and form in which the respondent has complied and is complying with paragraphs II, III, IV and V of this order;

B. For a period of ten (10) years from the date this order becomes final, notify the Commission at least thirty (30) days prior to any proposed change in respondent COLRIP, such as dissolution, assignment or sale resulting in the emergence of a successor, or the creation or dissolution of subsidiaries or any other change that may affect its compliance obligations arising out of this order; and

C. For a period of ten (10) years after the date on which this order becomes final, notify the Commission within thirty (30) days after the respondent forms, participates in the formation of, or joins any joint venture for the provision of marine pilotage on the Columbia and Willamette River Pilotage Ground. This paragraph does not require notification when a marine pilot joins COLRIP as a member of COLRIP.

VII.

It is further ordered, That, for the purpose of determining or securing compliance with this order, upon written request, respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to any facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon five days' notice to respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent in the presence of counsel.

VIII.

It is further ordered, That this order shall terminate on March 1, 2019.

APPENDIX A

Appendix A

[COLRIP Letterhead]

As you may be aware, Columbia River Pilots ("COLRIP") has entered into a consent order with the Federal Trade Commission. This order provides that COLRIP may not:

1. prevent any member from leaving COLRIP to compete for marine pilotage on the Columbia and Willamette River Pilotage Ground;
2. penalize any member who leaves COLRIP to compete for marine pilotage on the Columbia and Willamette River Pilotage Ground, except for members who have been members for less than five (5) years or who fail to give COLRIP ninety days notice of their departure; or
3. agree or attempt to agree with any provider of marine pilotage on the Columbia River Pilotage Ground (other than agreements or understandings with COLRIP members, trainees or apprentices limited to performance of their pilotage duties with COLRIP and to the term of their membership, apprenticeship or training program with COLRIP) concerning:
 - a. the customers COLRIP or another provider will serve;
 - b. the amount of marine pilotage COLRIP or another provider will provide;
 - c. the number of marine pilots COLRIP or another provider may include;
 - d. the exclusivity of any contract for marine pilotage; or
 - e. the content of any communication to the Oregon Board of Maritime Pilotage.

To comply with these prohibitions, COLRIP has modified certain of its governing documents.

In sum, the order leaves COLRIP members with five or more years of membership free to decide for themselves, without interference from COLRIP, whether they wish to leave COLRIP to compete for marine pilotage on the Columbia and Willamette River Pilotage Ground, and prevents COLRIP from seeking an agreement with any marine pilot who leaves COLRIP that would limit the marine pilot's ability to compete with COLRIP.

For more specific information, you should refer to the order itself, a copy of which is enclosed.

[Name and title of COLRIP Official]

Enclosure

255

Decision and Order

APPENDIX B

Appendix B

[COLRIP Letterhead]

As you may be aware, Columbia River Pilots ("COLRIP") has entered into a consent order with the Federal Trade Commission. This order provides that COLRIP may not:

1. prevent any member from leaving COLRIP to compete for marine pilotage on the Columbia and Willamette River Pilotage Ground;
2. penalize any member who leaves COLRIP to compete for marine pilotage on the Columbia and Willamette River Pilotage Ground, except for members who have been members for less than five (5) years or who fail to give COLRIP 90 days notice of departure; or
3. agree or attempt to agree with any provider of marine pilotage on the Columbia River Pilotage Ground (other than agreements or understandings with COLRIP members, trainees or apprentices limited to performance of their pilotage duties with COLRIP and to the term of their membership, apprenticeship or training program with COLRIP) concerning:
 - a. the customers COLRIP or another provider will serve;
 - b. the amount of marine pilotage COLRIP or another provider will provide;
 - c. the number of marine pilots COLRIP or another provider may include;
 - d. the exclusivity of any contract for marine pilotage; or
 - e. the content of any communication to the Oregon Board of Maritime Pilotage.

In sum, the order leaves COLRIP members with five or more years of membership free to decide for themselves, without interference from COLRIP, whether they wish to leave COLRIP to compete for marine pilotage on the Columbia and Willamette River Pilotage Ground, and prevents COLRIP from seeking any agreement with any marine pilot who leaves COLRIP that would limit the marine pilot's ability to compete with COLRIP. Consistent with the order,

should any COLRIP member elect to leave COLRIP to compete for marine pilotage, you are free to hire that marine pilot instead of COLRIP to meet your pilotage needs.

For more specific information, you should refer to the order itself, a copy of which is enclosed.

[Name and title of COLRIP Official]

Enclosure

IN THE MATTER OF
ASOCIACION DE FARMACIAS REGION
DE ARECIBO, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3855. Complaint, March 2, 1999--Decision, March 2, 1999

This consent order, among other things, prohibits an association of approximately 125 pharmacies operating in northern Puerto Rico and one of its officers from jointly negotiating prices or other terms for pharmacies and jointly boycotting, threatening to boycott, or refusing to provide pharmacy goods and services to any payer or provider.

Participants

For the Commission: *Gary Schorr, Steven Osnowitz, Michael Kades, Patricia Allen, David Pender, Anne Schenof, Daniel Ducore, William Baer, Louis Silvia and Peter Gulyn.*

For the respondents: *Eric Tulla, San Juan, Puerto Rico.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that Asociacion de Farmacias de Region Arecibo ("respondent AFRA") and Ricardo L. Alvarez Class ("respondent Alvarez") have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. This complaint concerns the respondents' agreement to set the price and other terms and conditions under which they would participate in "the Reform," the Puerto Rican program established under the Puerto Rico Health Insurance Administration Act of 1993, Act No. 72, Article II, to provide care to Puerto Rico's indigents. The Government of Puerto Rico established the Reform in order to provide high quality health care, including pharmacy goods and services, to its indigents.