UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

In the Matter of BUNKER RAMO CORPORATION, GTE INFORMATION SYSTEMS INCORPORATED, and OPTIONS PRICE REPORTING AUTHORITY	File No. 4-280

STATEMENT OF BUNKER RAMO IN OPPOSITION TO LEVY OF ACCESS FEES BY THE OPTIONS PRICE REPORTING AUTHORITY

June 20, 1978

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1. OPRA and its constituent members are already compensated for their last sale data in the form of substantial subscriber fees, which were the only kind of fees referred to in the OPRA Plan.

2. Assuming that options last sale data processing costs are passed on to the investing public, such costs should be initially borne by OPRA's members, not by the vendors, as the members are in a unique position to control the costs.

3. OPRA is a combination of exchanges which has fixed its prices for data in a way which would violate the anti-trust laws unless the Commission finds that such price fixing is "necessary to make the Exchange Act work." No such finding is justified here, as the absence of access fees did not and could not present regulatory problems.

4. The proposed 1977 Contract would modify, not terminate, the OPRA/vendor relationship. Pursuant to the 1975 Contract, any modification of the contractual relationship between the parties requires the consent of both parties. Bunker Ramo has not consented to pay access fees.

D I S C U S S I O N

I. Factual Background

In April 1974, the Commission directed the options exchanges to address the issue of consolidated reporting of options last sale prices. From this directive evolved the original OPRA Plan which has been filed officially with the Commission under Section 11A of the Exchange Act and has become effective under Section 11A. The Plan provides for the development of a central reporting system which will be controlled by the OPRA members. Most relevant to this proceeding, the Plan (Part II(b)(4)), provides that

> "OPRA shall make all policy decisions under the Plan . . . determining the level of fees to be paid by subscribers to the parties . . . ."

The Plan (Part V) also provides that the parties (the exchanges) shall share the start up, administrative and operating costs of the system. Further, the Plan contemplates a "profit" on the system (Part V(d)). Nowhere does the Plan mention or establish a procedure for determining the payment of access fees by vendors.

Pursuant to the Plan, in 1975 Bunker Ramo was asked by the Chicago Board Options Exchange to consider including options trading data as part of Bunker Ramo's market information services to brokers, dealers, investors and other members of the public. Bunker Ramo thereafter entered into a

contract dated June 6, 1975, for the receipt of options "last sale prices" to be disseminated to Bunker Ramo subscribers (the "1975 Contract"). The CBOE entered into similar agreements with other vendors -- who compete directly with Bunker Ramo in providing such market information. Pending development of the central processing facility by the CBOE and the AMEX under the collective caption "OPRA," the last sale data was provided to the vendors directly by each options exchange.

Consistent with the OPRA Plan, there were no charges or "access fees" to the vendors for the last sale data provided under the 1975 Contract and, as a further incentive to the vendors to enter into the 1975 Contract and to distribute the data, OPRA agreed to pay line costs within a 100-mile radius of New York City.

In the Fall of 1977, Bunker Ramo was given notice of "termination" of the 1975 Contract and was served with a proposed "new" contract from OPRA which was to be applicable to the new "high speed transmission system" for options last sale data which OPRA was then in the process of implementing. This high speed system is operated for OPRA by SIAC under a contract. The SIAC contract, however, is not "arms length" inasmuch as the American Stock Exchange, a principal OPRA member, is one of the owners of SIAC. The 1977 Contract was substantively the same as the 1975 Contract, with two signficant modifications:

(1) it levied for the first time a monthly charge dubbed an "access fee," and

(2) terminated the practice of supplying the last sale data at the vendors' facility within 100 miles of New York, and instead required the vendors to pay for all "line charges."

Bunker Ramo declined to execute the proferred 1977 Contract.

Like each other vendor who is not associated with any self-regulatory organization, Bunker Ramo competes in the private sector. Bunker Ramo has engaged in the business of vending securities information for approximately 50 years. Originally it posted last sale reports on large electromechanical boards in brokerage offices. Currently its services are made available on the familiar desk-top cathode-ray-tube interrogation terminals.

As Bunker Ramo has strong competitors -- many of them larger and better capitalized -- it should be obvious that its pricing structure is regulated very closely by competitive forces. However, it should be kept in mind that its pricing structure is based upon providing quotation and display services and not on the availability or non-availability of any particular set of data -- such as, for example, options last sale reports.

In part through the availability of up to date last sale reports, options trading has become quite popular and our customers have become accustomed to receiving the data. Our overall service would be generally less desirable and we

would, therefore, suffer competitively if we were forced to discontinue options last sale data.

Our charges to users are based upon the amount of equipment that we supply and the expenses which we incur to develop, install and maintain that equipment in a user's location. Bunker Ramo does not exact any surcharges for its basic quotation services, either in terms of the amount or frequency of usage, or of the type of data which a user requests. In particular, it does not identify separate charges for, or realize a specific profit on, the dissemination of options last sale information.

In order for a user to obtain a particular set of information from Bunker Ramo, the user must enter into a so-called "subscriber agreement" and pay fees for the data directly to OPRA or, in the case of stock prices, to the Consolidated Tape Association. Bunker Ramo's functions with respect to dissemination of options last sale data are to receive, process, and make available in a timely manner to those eligible subscribers the information pertaining to options last sales. It is not primarily concerned with whether the data is high speed, low speed, or otherwise. Bunker Ramo is not, however, getting a "free ride." It incurs its own processing and distribution costs. And a very real expense which it incurs -- but for which it is not compensated by OPRA -- relates to the OPRA requirement that vendors must maintain records and report periodically to OPRA the identity

of those to whom OPRA's data is being disseminated. Such record keeping and reporting is expensive. This assists OPRA in collecting its subscriber fees and, in a sense, is a trade-off for Bunker Ramo's receipt of the data at no charge.

Among the obligations which OPRA undertook in the 1975 Contract was to provide the information to be disseminated at no charge to vendors. Although that agreement was reached prior to the development of the OPRA high speed line, it was understood by the parties at the time that such a central facility would be developed. The 1975 Contract provided that the last sale reports would continue to be available at no charge to vendors, even after the new system was operative.

As a result of the development of the high speed line, Bunker Ramo and other vendors incurred the cost of modifying their own central processing systems in order to process the new OPRA high speed data.

It is not a mere coincidence that OPRA chose to terminate the 1975 Contract just as the high speed line was about to commence operations, or that the access charges specified in the proposed agreement are tied to the availability of the high speed line. Thus, it would appear that one purpose for OPRA's action in terminating the 1975 Contract is to retreat from its own expressed intention to make the information available at no charge.

Before addressing the three specific questions which are to be examined during this hearing, Bunker Ramo would like to emphasize that these hearings involve fundamental regulatory issues and should not be considered simply as settling what some may consider a "street corner scrap" over penny ante matters. These hearings -- as well as the possible solicitation of public comment and rule making on the general question of last sale access fees -- can resolve the basic question of the authority of securities exchanges to dictate fees for market information. These proceedings will thus serve the public interest by establishing the guidelines for making trading information available to the broker-dealer community and to investors.

II. " ess Fees" Are Neither Contemplated By The Exchange Act Nor Consistent With Any Legitimate Regulatory Purpose.

OPRA's position seems to be that access fees are legitimate because the Exchange Act does not expressly prohibit such fees. Bunker Ramo concurs that Congress did not address the legitimacy of such fees, but we respectfully suggest that collecting and disseminating market data is the responsibility of an exchange, and the related expenses are legitimate exchange operating costs and should be recovered by the exchanges from their members and other subscribers to the data. OPRA takes the position, we assume, that its members generate the last sale data and hence have proprietary

rights thereto. But the Commission should not overlook the fact that the options exchanges already impose fixed fees on the subscribers for use of the data. Each such subscriber must pay the so-called subscriber fee, even though the data is distributed on behalf of the exchanges and OPRA by the vendors. As the "subscriber fee" relates to the exchanges' claim of "ownership" of the trading information, the "access fee" must thus be justified apart from any concept of proprietary rights to the data.

A. The Vendors Should Not Pay For Improvements Such As The High Speed Consolidated Line Which Primarily Benefits The Options Exchanges.

A matching of benefit and burden should be the guideline in resolving the access fee issue.

As noted above, an information vendor such as Bunker Ramo is merely a conduit to the investing public for last trade data received from the exchanges. The recent improvement of the data reporting methods to eliminate errors and to consolidate the reporting through the so-called "high speed line" was not a business decision made by Bunker Ramo or over which Bunker Ramo exercised control. To the contrary, such improvements have the primary purpose and effect of benefiting the options exchanges and of satisfying their obligations to the SEC and to the investing public. Improvements in last sale reports are designed to increase confidence in the marketplace

with the hope and expectation of higher trading volume and increased commission income. In contrast, increased trading volume and higher quality data do not affect the revenues of information vendors such as Bunker Ramo. Bunker Ramo would have continued to provide last sale reports through its system, even if the exchanges had not implemented the high speed line.

As the subscribers pay for the "property rights" to the data, the access fee is designed solely to recover the exchanges' information processing costs. We submit that the exchanges should pay their own business expenses and that capital and operating costs should be recovered, if at all, as part of the subscribers' fee. Thus, we respectfully submit that the capital costs and related operating expenses associated with a centralized options trading reporting system are not the kind of costs which may lawfully or fairly be imposed upon information vendors. Indeed, such costs may already be recaptured by the OPRA members by:

(1) higher trading volume on the exchanges attributable to the improved trade reporting system,

(2) higher commissions charged by the exchange members,

(3) higher subscribers' fees, or

(4) an increased number of last sale data subscribers.

There is a reasonable and easily defined line of demarcation for the allocation of exchange operating expenses:

the circuit connection point for the communication lines which link the vendors and OPRA. Under the 1975 Contract, the point was 100 miles from New York. OPRA now proposes moving the demarcation point under the exchange's own roof to recapture ordinary business costs associated with operating an exchange. We submit that the OPRA proposal is an unreasonable method of cost allocation.

B. Public Policy Dictates That The Types of Costs Incurred By OPRA Be Borne By Its Members, Who Are In a Unique Position to Control Such Costs.

Bunker Ramo and the other information vendors had no role in the decision to install the OPRA high speed line, in designing the system, or in controlling the related capital or operating costs. Perhaps the vendors could have performed these functions more efficiently than OPRA. Perhaps they could have negotiated a better contract with SIAC as, unlike the American Stock Exchange, the vendors have no conflict of interest by reason of ownership of SIAC. Nonetheless, OPRA would have the Commission order that the high speed line costs be paid by the vendors. If the Commission adopts the OPRA position, there will be no built-in incentives for OPRA to control its own operating costs or to examine critically any proposals for further capital expenditures. If it does not bear the costs, OPRA would have no incentive to be a "tough negotiator" with SIAC or any other supplier. A "no-lose

situation" would exist for OPRA, as further such capital expenditures (as part of a central market) could result in increased trading volume for its constituent exchanges, but the costs of any such experiments could be passed on to vendors such as Bunker Ramo.

As an alternative, we suggest that the full amount of developmental, capital and operating costs of public utility-type information processors such as OPRA should be borne by OPRA or billed to its constituent exchanges, and should not be levied on vendors.

From a purely economic point of view, one can reasonably assume that whoever bears the costs will undertake to pass the costs along to the ultimate consumers of the data -- in this instance, to investors who trade in options. Even Bunker Ramo will attempt to pass these costs on if it is forced to pay the access fees, but it is concerned that it may unnecessarily alienate its customers if it attempts to impose an options last sale surcharge or otherwise increase its fees without also increasing the services rendered. In contrast, OPRA already collects a subscriber fee which specifically identifies options data, and hence OPRA could easily pass along to its subscribers a portion of the capital costs of the high speed line.

Assuming, however, that both the vendors and OPRA could pass on the high speed line costs to broker-dealers and to their customers, the issue becomes one of determining

whether the vendors are the most appropriate conduit for transmission of the costs to investors. Interpositioning the vendors in the chain of cost distribution, as noted above, creates unnecessary commercial friction for the vendors in dealing with their customers, and imposes on the vendors the risk of being unable to pass on the added costs. More importantly, the vendors cannot control the costs, and hence the investors may pay more than they reasonably should. In contrast, if OPRA's members bear the risk of being unable to recapture such costs, OPRA and its members will be forced to keep costs low and to exercise sound judgment in operating and designing such systems and any improvements thereto. Indeed, the members will perhaps elect to absorb these added costs themselves without raising the subscriber fees, particularly if the successful new system increases exchange volume and trading revenue.

C. An Affirmative Determination of Reasonableness By the Commission That Access Fees Are Necessary Is The Only Insulation Against OPRA's Antitrust Liability For Collusive Conduct And Price Fixing.

OPRA's cartelized fixing of access fees raises serious questions under the antitrust laws. Through OPRA, all of the options exchanges have combined to pool their last sale data and to market such data on an all-or-none collective basis at prices which the members fix collectively. In

a non-regulated industry, such conduct would constitute a classic per se violation of the Sherman Act.

Such price fixing issues did not arise under the 1975 Contract because no access fee was charged to the vendors. Adoption of the Securities Act Amendments of 1975 on June 4, 1975, did nothing to insulate collective pricing from antitrust attack unless, under established doctrines, the Commission determines:

-- that access fees are necessary "to make the Exchange Act work" and

-- that the structure and level of the fees is "reasonable."

We submit that an affirmative finding on these two issues is necessary to insulate OPRA and the constituent exchanges from antitrust attack. We further submit that, upon examination, no policy of the Exchange Act is advanced by fixing of access fees by the options exchanges. The best evidence is history. Certainly the Exchange Act "worked" quite well prior to OPRA's efforts in 1977 to implement access fees.

Even if an exchange has certain proprietary rights to last sale data (a concept which need not be resolved in this proceeding), here the exchanges have collectively pooled their quotes (and their bargaining power) so that options trading data is unavailable from sources other than OPRA. While the public interest may be served by high speed consolidated reporting of sales, the appurtenant competitive restraints should be minimized and a strong showing made to

support fixing of prices for "access" to quotations. Proprietary rights of the individual exchanges, we submit, are distinct from the rights of OPRA, which represents a consortium or cartel of exchanges.

Unlike the options exchanges, the vendors must bargain individually. It is inconsistent with public policy and serves no purpose of the Exchange Act to permit the options exchanges to bargain collectively and cartelize access to last sale data while the vendors are required by the antitrust laws to negotiate individually.

In the absence of "collective bargaining" by the exchanges through OPRA, each exchange would be forced to negotiate directly with each vendor to arrange for distribution of the exchange's last sale data. Healthy and balanced competition would exist between the exchanges and the vendors. In all likelihood, no exchange could successfully impose a charge for its last sale data for fear of being excluded from the vendors' information services -- and from the right to collect subscriber fees. Unless they all agree to impose access fees, each options exchange would hesitate to impose access fees and to risk being dropped by the vendors. The exchanges whose data is distributed by the vendors would attract more trading business.

Any rate making proceeding for a statutory monopoly such as OPRA should, we submit, attempt to approximate the level of charges which would prevail in a competitive situation. Under competitive conditions, the open market access

fee for last sale options quotations would be zero. The result, we submit, and the only result consistent with the Exchange Act standard of the "interest of investors," is that no access fee is reasonable and that such price fixing by OPRA and its members should be rejected.

To sum up, while the interest of investors is doubtlessly served by collective information processing, the anti-competitive "fallout" of such an arrangement should be as minimal as possible. The interest of investors is not served by permitting the exchanges to use their collective power to impose access fees. Both the Supreme Court in Silver v. New York Stock Exch., 373 U.S. 341 (1963), and Congress in the 1975 Securities Acts Amendments, emphasized that competition in the securities industry is to be preserved wherever possible. See, e.g., S. Rep. No. 94-75 at 13 (94th Cong. 1st Sess. 1975) (legislative intent regarding unnecessary competitive restraints in SEC rules and regulations).

The benefits of competition can be achieved here by a finding that access fees are not "necessary."

III. The "Termination Clause" in the 1975 Contract Was Not Intended To Allow Unilateral Modification of the Contract.

The question of whether OPRA may discontinue providing vendors the communication circuit which links the vendors to OPRA's central processor should be dealt with in the framework of the 1975 Contract. There may be a number of just

causes for terminating the 1975 Contract, including a determination by either party to discontinue their respective business activity covered by the Contract. Thus, if the exchanges cease to trade options, or if Bunker Ramo chooses to discontinue providing options last sale prices as part of its inquiry service, the termination provision of the 1975 Contract would provide an orderly way of dissolving the relationship. Further, if there is a determination that Bunker Ramo is unable to provide a suitable dissemination service of options last sale prices, it is assumed that OPRA could employ the termination provision -- citing a public interest consideration as a just cause for termination.

In presenting the 1977 Contract, however, OPRA clearly is not "terminating" its relationship with any vendor. Rather, it is only modifying the 1975 Contract to provide for access fees and to end its payment of line charges. The 1975 Contract includes two relevant clauses: one providing for modification by agreement of the parties (Par. 22) and another which governs termination (Par. 16). From a reading of these two sections, it appears that the intent of the parties was to modify their contractual relationship only by mutual agreement.

Certainly the basic relationship between the exchanges and the vendors will continue uninterrupted if the 1977 Contract is executed. The termination clause is not a "modification clause" and it should not be interpreted as such.

The courts have not allowed termination of contracts for technical reasons, particularly where a supplier's product has become widely accepted and the terminated party, like Bunker Ramo, contributed its efforts toward making the venture successful. See Burger King Corp. v. Family Dining, Inc, 426 F.Supp. 485 (E.D. Pa. 1977), aff'd, 566 F.2d 1168 (3d Cir. 1977). And clauses permitting terminations at will by one party (OPRA) are highly suspect and will not be enforced where "contrary to equity and good conscience." Gaines W. Harrison & Sons, Inc. v. J. I. Case Company, 180 F.Supp. 243 (E.D.S.C. 1960) (damages awarded where distributor refused to sign a new, more onerous contract.)

IV. If Access Fees Are Upheld, Detailed Cost Data Will Be Required

The burden of proving that the level of fees is reasonable must fall on the party which levies the fees. To date, OPRA has only made conclusory statements that its access fees are "reasonable." Neither OPRA nor its constituent exchanges has submitted cost data to the Commission or the vendors in support of its fees except that, within the last few weeks, OPRA supplied Bunker Ramo with the most rudimentary cost data. This submission neglects to reflect the following:

(1) cost savings to the constituent exchanges by reason of the high speed consolidated line (including savings of personnel costs no longer needed to correct data transmitted directly by the exchanges to the vendors);

(2) economic benefits expected to be realized by the constituent exchanges by reason of the high speed line (i.e., higher trading volume);

(3) a reasonable detailed breakdown of capital and operating costs;

(4) a description of equipment used and alternative or shared uses which result in a cost sharing;

(5) the relevant SIAC costs and the amount of any profit to SIAC on the SIAC/OPRA contract; and

(6) revenues and profits from subscriber agreements for the options last sale data.

Due to the skimpy available data, OPRA has not even met the threshold of its burden of proving reasonableness.

In considering the level of fees, the Commission, of necessity, must consider a number of collateral questions:

(1) Should the OPRA access fee be a fixed rate or should it decline when the exchanges benefit from higher subscriber fees, higher trading volume and higher profits?

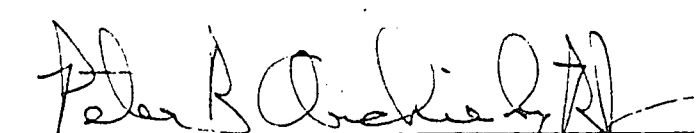
(2) Should there be an offset against the OPRA operating costs in the amount of the cost savings to the exchanges resulting from the high speed line (as compared to the prior method of reporting last sale data by the exchanges)?

Bunker Ramo shares the Commission's desire that these issues not be resolved in a formal rate-making proceeding. We suggest that they can best be resolved by a determination that access fees are not necessary.

V. Conclusion

For the foregoing reasons, Bunker Ramo respectfully submits that the Commission should conclude that access fees for last sale information are not consistent with the purposes of the Exchange Act and are not "necessary to make the Exchange Act work." OPRA's coercive effort to amend the 1975 Contract by a purported termination thereof is inconsistent with the terms of the contract and is a gross abuse of power by a regulated monopolist.

Respectfully submitted,



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