

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 ) Civil No. FL-74-78-Civ-NCR, Jr.  
 v. )  
 ) Filed: MAR 22 1977  
 CLIMATROL CORPORATION, and )  
 SCREENCO, INC., )  
 )  
 Defendants. )

PROPOSED CONSENT DECREE  
COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. §16(b)) the United States of America hereby submits this Competitive Impact Statement relating to the proposed consent judgment submitted for entry in this civil antitrust proceeding.

I. Nature Of The Proceeding

On March 21, 1974, the Department of Justice filed a civil antitrust complaint under Section 4 of the Sherman Act (15 U.S.C. §4) alleging that the above-named defendants violated Section 1 of the Sherman Act (15 U.S.C. §1). The complaint alleges that the defendants and various co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce, the substantial terms of which were to allocate screen enclosure projects between the corporate defendants in Southern Florida.

Entry by the Court of the proposed consent judgment will terminate the action, except that the Court will retain jurisdiction over the matter for possible further proceedings

which may be required to interpret, modify or enforce the judgment, or to punish alleged violations of any of the provisions of the judgment.

## II. Description Of The Practices Involved In The Alleged Violation

The defendants are engaged in the sale and installation of screen enclosures in Southern Florida. Screen enclosures are structures enclosing balconies, patios, porches, swimming pools and other spaces, and consist of frames to which metal or other screen cloth is fastened, and various other parts and accessories. Typical customers for screen enclosures would include contractors engaged in the construction of apartment buildings and condominium projects.

The complaint in this case alleges that the defendants and co-conspirators engaged in a continuing conspiracy, from at least as early as 1969, to allocate screen enclosure customers in a tri-county market area in Southern Florida. The complaint further alleges that the defendants allocated screen enclosure customers by, among other things, refraining from submitting bids, withdrawing bids, or submitting intentionally high, or complementary, bids on screen enclosure projects for which one corporate defendant or the other had been designated as the successful low bidder. The complaint also alleges that the defendants actually allocated customers as they agreed to do. The tri-county market area alleged to have been affected by the charged conspiracy includes the Counties of Dade, Broward and Palm Beach, in the State of Florida.

The complaint alleges that the charged conspiracy had the following effects: (a) competition between the defendants

in the sale of screen enclosures in the tri-county area was restrained; (b) quotations and bids for the sale of screen enclosures in the tri-county area were fixed and rigged at artificial and noncompetitive levels; and (c) purchasers in the tri-county area were deprived of the benefits of free and open competition in the sale of screen enclosures.

### III. Explanation Of The Proposed Consent Judgment

The United States and the defendants have stipulated that the proposed consent judgment, in the form negotiated by and between the parties, may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The stipulation between the parties provides that there has been no admission by any party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, entry of the proposed judgment is conditioned upon a determination by the Court that the proposed judgment is in the public interest.

#### A. Prohibited Conduct

The proposed judgment prohibits the defendants from entering into any agreements or arrangements or engaging in any discussions with each other or any other competitor to fix prices, allocate customers, allocate territories or rig bids. The defendants are further prohibited from coercing or attempting to coerce each other or any other competitor to adopt uniform or specific prices or other conditions of sale of screen enclosures.

The proposed consent judgment requires that each defendant furnish a copy of the judgment to each of its officers and directors and to each of its employees having sales, bidding, or <sup>pricing</sup> ~~bidding~~ responsibility. Also each defendant is required to

furnish to the Court and the plaintiff an affidavit as to the fact and manner of its notifying its current employees of the judgment.

B. Scope of the Proposed Judgment

By its terms the judgment applies to each defendant and to each of its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons who act in concert with either of the defendants, provided that such persons have actual notice of the judgment, by personal service or otherwise. The judgment would apply to the defendants' activities wherever they may occur.

C. Effect Of The Proposed Judgment On Competition

The relief encompassed in the proposed consent judgment is designed to prevent any continuance or recurrence of the activities alleged in the complaint. The prohibitive language of the judgment should ensure that future bids, quotations, other price actions and customer solicitation practices of the defendants will be independently determined, without the restraining and artificial influences which result from meetings and agreements between competitors.

The judgment provides two methods for determining the defendants' compliance with the terms of the judgment. First, the Government is given access, upon reasonable notice, to the records of the defendants, to examine these records for possible violations of the judgment, and to interview officers, directors, agents, partners or employees of the defendants. Second, the defendants may be required to submit written reports with respect to any matters contained in the proposed judgment.

It is the opinion of the Department of Justice that the proposed consent judgment contains fully adequate provisions

to prevent continuance or recurrence of the violations of the antitrust laws charged in the complaint. In the Department's view, disposition of the lawsuit without further litigation is appropriate in that the proposed judgment provides all the relief which the Government sought in its complaint; the additional expense of litigation would therefore not result in additional public benefit.

IV. Remedies Available to Potential 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 such person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed consent judgment in this proceeding will neither impair nor assist the bringing of any such private antitrust actions. Under the provisions of Section 5(a) of the Clayton Act [15 U.S.C. §16(a)], this consent judgment has no prima facie effect in any subsequent lawsuits which may be brought against these defendants.

V. Procedures Available for Modification Of The Proposed Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed judgment should be modified may submit written comments to Donald A. Kinkaid, Antitrust Division, U.S. Department of Justice, 1776 Peachtree Street, N.W., Suite 420, Atlanta, Georgia 30309, within the 60-day period provided by the Act. These comments, and the Department'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 judgment at any time prior to its entry if it should determine that some modification of it is necessary. The proposed judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for such order as may be necessary or appropriate for its modification, interpretation or enforcement.

VI. Alternatives To The Proposed Consent Judgment

This case does not involve any unusual or novel issues of fact or law which might make litigation a more desirable alternative than entry of this consent decree. The Department considers the substantive language of the judgment to be of sufficient scope and effectiveness to make litigation on relief unnecessary, as the judgment provides all relief which was requested in the complaint.

VII. Other Materials

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 judgment, and consequently, none are filed herewith.

Dated: **MAR 22 1977**

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JACK C. WILLIAMSON

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JUSTIN M. NICHOLSON

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