

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No. 96-CV-4044

A&L MAYER ASSOCIATES, INC.;  
A&L MAYER, INC.; and  
FIBRAS SALTILLO, S.A. DE C.V.,

Filed: May 30, 1996

Defendants.

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2 of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b), the United States files this Competitive Impact Statement relating to the proposed final judgment as to United States v. A&L Mayer Associates, Inc., et al., submitted for entry in this civil antitrust proceeding.

I

NATURE AND PURPOSE OF THE PROCEEDINGS

On May 30, 1996, the United States filed a civil antitrust complaint alleging that under Section 4 of the Sherman Act, as amended, 15 U.S.C. § 4, the above-named defendants combined and conspired with others from at least as early as January 1990 to April 1995, to lessen and eliminate competition in the sale of tampico fiber in the United States, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. A companion criminal information against A&L Mayer Associates, Inc. was filed on . The civil complaint alleges that as part of the conspiracy, the defendants and co-conspirators among other things:

- (a) fixed the prices at which tampico fiber was imported

into the United States;

(b) fixed the resale prices for tampico fiber charged by their exclusive United States distributors; and

(c) allocated sales between such distributors.

The complaint seeks a judgment by the Court declaring that the defendants engaged in unlawful combinations and conspiracies in restraint of trade in violation of the Sherman Act. It also seeks an order by the Court to enjoin and restrain the defendants from any such activities or other activities having a similar purpose or effect in the future.

The United States and defendants have stipulated that the proposed final judgment may be entered after compliance with the APPA, unless the United States withdraws its consent.

The Court's entry of the proposed final judgment will terminate this civil action against these defendants, except that the Court will retain jurisdiction over the matter for possible further proceedings to construe, modify or enforce the judgment, or to punish violations of any of its provisions.

## II

### DESCRIPTION OF THE PRACTICES GIVING RISE TO THE ALLEGED VIOLATIONS OF THE ANTITRUST LAWS

As defined in the complaint, tampico fiber is a natural vegetable fiber produced by the lechuguilla plant and grown in the deserts of northern Mexico. It is harvested by individual farmers, processed, finished and exported worldwide, where it is used as brush filling material for industrial and

consumer brushes. It is available in natural white, bleached white black, gray and a wide variety of mixtures.

The complaint further alleges that the defendant corporations accounted for aggregate United States sales of tampico of approximately \$10 million during the period January of 1990 through April of 1995. During the period of time covered by the complaint the defendants sold and shipped substantial quantities of tampico fiber in a continuous and uninterrupted flow of interstate commerce from the processing facility of Fibras Saltillo, S.A. de C.V. in Mexico through A&L Mayer Associates, Inc., with offices in New York, to their exclusive United States distributor and the distributor's customers throughout the United States, including those located in the Eastern District of Pennsylvania. Similarly, the complaint alleges that non-defendant co-conspirators sold and shipped additional substantial quantities of tampico fiber in a continuous and uninterrupted flow of interstate commerce from another processing facility in Mexico through their exclusive United States distributor to customers throughout the United States, including those located in the Eastern District of Pennsylvania.

The complaint alleges that the defendants engaged in three forms of concerted action and states three causes of action: (1) an agreement to fix import prices, (2) an agreement to fix resale prices, and (3) an agreement to allocate sales. Essentially, the complaint alleges that defendants and their co-conspirators fixed the prices at which tampico fiber was sold to their two exclusive

United States distributors, agreed on resale prices with those two distributors and agreed to a percentage allocation of sales volume between those distributors.

The defendants and their co-conspirators went far beyond suggesting resale prices for their distributors. Resale price sheets were provided to the two United States distributors by the defendants and co-conspirators. As a condition of becoming and remaining a United States distributor of tampico, one of these distributors agreed by written contract with one of the defendants to sell at the prices listed on the price sheet. From at least January 1990 on, both of the two exclusive United States' distributors of tampico had identical price sheets supplied by the defendants and co-conspirators, and the majority of sales were made by those distributors at these list prices or other agreed upon prices.

The use of resale price maintenance by the defendants and co-conspirators was designed to and had the effect of monitoring and enforcing the horizontal price-fixing and sales volume allocation agreements between the defendants and co-conspirators. The defendants' conduct had the effect of lessening or eliminating competition between the two United States distributors of tampico in order to maintain prices at artificially high and non-competitive levels.

In furtherance of the conspiracy, the defendants and their co-conspirators, among other things, periodically met, discussed and agreed to new import and resale prices for tampico fiber, and

met, discussed and compared the annual sales volumes of their United States distributors to ensure they were at or about the percentages the defendants and co-conspirators had agreed upon for each.

### III

#### EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and the defendants have stipulated that a final judgment, in the form filed with the Court, may be entered by the Court at any time after compliance with the APPA, 15 U.S.C. § 16(b)-(h). The proposed final judgment provides that the entry of the final judgment does not constitute any evidence against or an admission by any party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the APPA, entry of the proposed final judgment is conditioned upon the Court finding that its entry will be in the public interest.

The United States has filed a criminal information charging A&L Mayer Associates, Inc. and unnamed co-conspirators with a conspiracy to fix the prices and allocate sales of tampico fiber imported into and sold in the United States, in violation of the Sherman Act (15 U.S.C. § 1).

The United States does not routinely file both civil and criminal cases involving the same underlying conduct. It is appropriate to do so in this case, however, because of the extent of the control of the market by a small number of companies conspiring to eliminate price competition in the sale of tampico fiber in the United States through a comprehensive scheme of

fixing the price of imported tampico, allocating sales volumes between their exclusive distributors, and dictating the prices at which those distributors resold tampico fiber within the United States.

The proposed final judgment contains two principal forms of relief. First, the defendants are enjoined from repeating the behavior which characterized the tampico fiber conspiracy and from certain other conduct that could have similar anticompetitive effects. Second, the proposed final judgment places affirmative burdens on the defendants to pursue a compliance program directed toward avoiding a repetition of the tampico fiber conspiracy.

A. Prohibited Conduct

Section IV of the proposed final judgment broadly enjoins each defendant from conspiring to fix prices, allocate sales, discourage new entrants, or otherwise restrict or eliminate the supply of tampico fiber sold to any customer in the United States, (IV (A)); from engaging in any conduct to set or control the resale prices of any distributor to their customers (IV (B), (C) and (D) ); and from joining any group whose aims or activities are prohibited by Sections IV (A)-(D) of the final judgment (IV (E)). Specifically, as regards tampico fiber sold in the United States, Sections IV (A)-(E) of the proposed final judgment provide as follows.

Section IV (A) of the proposed final judgment enjoins the defendants from directly or indirectly agreeing with any other

processor of tampico fiber or such processor's distributors to (1) raise, fix, or maintain the prices or other terms or conditions for the sale or supply of tampico fiber; (2) allocate sales volumes, geographic markets or customers for tampico; (3) discourage or eliminate new entrants into the tampico fiber market; and (4) restrict or eliminate the supply of tampico fiber to any customer.

Section IV (B) of the proposed final judgment enjoins the defendants from directly or indirectly entering into, adhering to, maintaining, furthering, enforcing or claiming any right under any contract, agreement, understanding, plan or program with any distributor to fix or maintain the prices at which tampico fiber sold by defendants may be resold or offered for sale by any distributor.

Section IV (C) of the proposed final judgment enjoins the defendants from directly or indirectly adopting, promulgating, suggesting, announcing or establishing any resale pricing policy for tampico fiber.

Section IV (D) of the proposed final judgment enjoins the defendants from threatening any distributor with termination or terminating any distributor for that distributor's pricing; or discussing with any present or potential distributor any decision regarding termination of any other distributor for any reason directly or indirectly related to the latter distributor's resale pricing; provided, however, that nothing herein shall prohibit any defendant from terminating a distributor for any reasons

other than the distributor's pricing.

Section IV (E) of the proposed final judgment enjoins the defendants from participating or engaging, directly or indirectly through any trade association, organization or other group, in any activity which is prohibited in Sections IV (A)-(D) of the proposed final judgment.

B. Permitted Communications

The only exception to the broad prohibitions of Section IV of the proposed final judgment is contained in Section V and concerns any necessary negotiations, arrangements or communications with another processor or such processor's distributors or any agent, broker or representative of such processor or distributor in connection with bona fide proposed or actual purchases of tampico fiber from or sales of tampico fiber to that processor or distributor.

C. Defendants' Affirmative Obligations

Section VI requires that within thirty (30) days of entry of the final judgment, the defendants adopt or pursue an affirmative compliance program directed toward ensuring that their employees comply with the antitrust laws. More specifically, the program must include the designation of an Antitrust Compliance Officer responsible for compliance with the final judgment and reporting any violations of its terms. It further requires that each defendant furnish a copy of the final judgment to each of its officers and directors and each of its employees who is engaged in or has responsibility for or authority over pricing of tampico

fiber within sixty (60) days of the date of entry, and to certify that it has distributed those copies and designated an Antitrust Compliance Officer within seventy-five (75) days. Copies of the final judgment also must be distributed to anyone who becomes such an officer, director or employee within thirty (30) days of holding that position and to all such individuals annually.

Furthermore, Section VI requires each defendant to brief each officer, director and employee engaged in or having responsibility over pricing of tampico fiber as to the defendant's policy regarding compliance with the Sherman Act and with the final judgment, including the advice that his or her violation of the final judgment could result in a conviction for contempt of court and imprisonment and/or fine and that the defendant will make legal advice available to such persons regarding compliance questions or problems. The defendants annually must obtain (and maintain) certifications from each such person that the aforementioned briefing, advice and a copy of the final judgment were received and understood and that he or she is not aware of any violation of the final judgment that has not been reported to the Antitrust Compliance Officer. Finally, each defendant must submit to the plaintiff an annual declaration as to the fact and manner of its compliance with the final judgment.

Under Section VII of the final judgment, the Justice Department will have access, upon reasonable notice, to the defendants' records and personnel in order to determine defendants' compliance with the judgment.

D. Scope of the Proposed Judgment

(1) Persons Bound by the Decree

The proposed judgment expressly provides in Section III that its provisions apply to each of the defendants and each of their officers, directors, agents and employees, subsidiaries, successors and assigns and to all other persons who receive actual notice of the terms of judgment.

In addition, Section III of the judgment prohibits each of the defendants from selling or transferring all or substantially all of its stock or assets used in its tampico fiber business unless the acquiring party files with the Court its consent to be bound by the provisions of the judgment.

(2) Duration of the Judgment

Section IX provides that the judgment will expire on the tenth anniversary of its entry.

E. Effect of the Proposed Judgment on Competition

The prohibition terms of Section IV of the judgment are designed to ensure that each defendant will act independently in determining the prices, and terms and conditions at which it will sell or offer to sell tampico fiber, and that there will be no conspiratorial restraints (horizontal or vertical) in the tampico fiber market. The affirmative obligations of Sections VI and VII are designed to insure that each corporate defendant's employees are aware of their obligations under the decree in order to avoid a repetition of behavior that occurred in the tampico fiber industry during the conspiracy period.

Compliance with the proposed judgment will prevent price collusion, allocation of sales, markets and customers, concerted activities in restricting new entrants and customers, and resale price restraints by each of the defendants with each other and with other tampico fiber processors and/or distributors.

#### IV

##### REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

After entry of the proposed final judgment, any potential private plaintiff who might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal and equitable remedies which he/she may have had if the proposed judgment had not been entered. The proposed judgment may not be used, however, as prima facie evidence in private litigation, pursuant to Section 5(a) of the Clayton Act, as amended, 15 U.S.C. § 16(a).

#### V

##### PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED CONSENT JUDGMENT

The proposed final judgment is subject to a stipulation between the government and the defendants which provides that the government may withdraw its consent to the proposed judgment any time before the Court has found that entry of the proposed judgment is in the public interest. By its terms, the proposed judgment provides for the Court's retention of jurisdiction of this action in order to permit any of the parties to apply to the Court for such orders as may be necessary or appropriate for the

modification of the final judgment.

As provided by the APPA (15 U.S.C. § 16), any person wishing to comment upon the proposed judgment may, for a sixty-day (60) period subsequent to the publishing of this document in the Federal Register, submit written comments to the United States Department of Justice, Antitrust Division, Attention: Robert E. Connolly, Chief, Middle Atlantic Office, Suite 650 West, 7th and Walnut Streets, Philadelphia, Pennsylvania 19106. Such comments and the government's response to them will be filed with the Court and published in the Federal Register. The government will evaluate all such comments to determine whether there is any reason for withdrawal of its consent to the proposed judgment.

## VI

### ALTERNATIVE TO THE PROPOSED FINAL JUDGMENT

The alternative to the proposed final judgment considered by the Antitrust Division was a full trial of the issues on the merits and on relief. The Division considers the substantive language of the proposed judgment to be of sufficient scope and effectiveness to make litigation on the issues unnecessary, as the judgment provides appropriate relief against the violations alleged in the complaint.

VII

DETERMINATIVE MATERIALS  
AND DOCUMENTS

No materials or documents were considered determinative by the United States in formulating the proposed Final Judgment. Therefore, none are being filed pursuant to the APPA, 15 U.S.C. § 16(b).

Dated:

Respectfully submitted,

/s/

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Attorney General

/s/

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