DAVID D. FREUDENTHAL
United States Attorney
District of Wyoming
Cheyenne, Wyoming
(307) 772-2124

RICHARD B. COHEN
CARLA G. ADDICKS
Antitrust Division
U.S. Department of Justice
450 Golden Gate Avenue
San Francisco, CA 94102
(415) 556-6300

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF WYOMING

UNITED STATES OF AMERICA, Plaintiff, vs. NAGEL MOTORS, INC., GREINER MOTOR COMPANY, INC. and BENSON CHEVROLET, INC., Defendants.	)	Civil No. 94CV146-J 6/2/94

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b) - (h), the United States submits this Competitive Impact Statement relating to the proposed Final

Judgment submitted for entry with the consent of Nagel Motors, Inc., Greiner Motor Company, Inc. and Benson Chevrolet, Inc. in this civil antitrust proceeding.

I.

NATURE AND PURPOSE OF THE PROCEEDING

On , 1994, the United States filed a civil antitrust complaint alleging that Nagel Motors, Inc., Greiner Motor Company, Inc., Benson Chevrolet, Inc. and their co-conspirators conspired to unreasonably restrain competition among Casper, Wyoming automobile body repair shops in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Complaint asks the Court to find that Nagel Motors, Inc., Greiner Motor Company, Inc., and Benson Chevrolet, Inc. have violated Section 1 of the Sherman Act and further requests the Court to enjoin the continuance of the conspiracy.

Entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction over the matter for further proceedings which may be required to interpret, enforce or modify the Judgment or to punish violations of any of its provisions.

II.

PRACTICES GIVING RISE TO THE ALLEGED VIOLATIONS

Defendants, Nagel Motors, Inc., Greiner Motor Company, Inc. and Benson Chevrolet, Inc. are automobile dealerships operating in Casper, Wyoming. They each offer a full range of automobile repair services, including automobile body repair work.

The Government contends, and was prepared to show at trial, that during the period beginning as early as December 1990 and continuing through at least July 1993, the defendants and their co-conspirators agreed, combined and conspired to unreasonably restrain competition among Casper, Wyoming area automobile body repair shops in violation of Section 1 of the Sherman Act. These agreements, combinations and conspiracies consisted of discussions and information exchanges aimed at increasing the rates charged for automobile body repair services in the Casper area.

For the purpose of forming and effectuating these agreements, combinations and conspiracies, Nagel Motors, Inc., Greiner Motor Company, Inc., Benson Chevrolet, Inc., and their co-conspirators, communicated with each other concerning the need to increase automobile body repair rates and, in conjunction with these discussions, disseminated to each other information concerning contemplated changes in automobile body repair rates. As a result of their discussions and exchange of contemplated changes in repair rates, coordinated rate increases were put into effect.

These agreements, combinations and conspiracies suppressed price competition among the defendants and their co-conspirators for providing automobile body repair services in the Casper area and deprived consumers of the benefits of free and open competition in the purchase of automobile body repair services.

III.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and Nagel Motors, Inc., Greiner Motor Company, Inc. and Benson Chevrolet, Inc. have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b) - (h). The proposed Final Judgment provides that its entry does not constitute any evidence against or admission of 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, 15 U.S.C. § 16(e), the proposed Final Judgment may not be entered unless the Court finds that entry is in the public interest. Section VIII of the proposed Final Judgment sets forth such a finding.

The proposed Final Judgment is intended to ensure that Nagel Motors, Inc., Greiner Motor Company, Inc. and Benson Chevrolet, Inc. discontinue all practices which unreasonably restrain competition among automobile body repair shops.

A. Prohibitions and Obligations

Under Section IV of the proposed Final Judgment, Nagel Motors, Inc., Greiner Motor Company, Inc. and Benson Chevrolet, Inc. are enjoined and restrained from: (1) agreeing with any other automobile body repair shop to fix, establish, raise, stabilize or maintain any hourly rate or part price or discount; (2) participating in any discussion with or communicating with any other automobile body repair shop concerning adherence to or changes to, or the need or desirability of adhering to or changing, any hourly rate or part price or discount; and (3) disseminating any information to any automobile body repair shop concerning any planned or contemplated change in an hourly rate or part price or discount.

Section V of the proposed Final Judgment obligates Nagel Motors, Inc., Greiner Motor Company, Inc. and Benson Chevrolet, Inc. to implement and maintain an antitrust compliance program. This program would require each defendant to designate an Antitrust Compliance Officer within 30 days of entry of the Final Judgment. The Antitrust Compliance Officer for each defendant would be responsible for implementing and supervising the antitrust compliance program and compliance with the Final Judgment. Section V also obligates Nagel Motors, Inc., Greiner Motor Company, Inc. and Benson Chevrolet, Inc. to distribute

within 60 days from entry of the Final Judgment, a copy of the Final Judgment to all officers and employees responsible for approving, disapproving, monitoring, recommending, or implementing any hourly rate or part price or discount, as well as any officer or employee who succeeds to such a position, and briefing those persons annually on the meaning and requirements of the Final Judgment and the antitrust laws and advising them that the defendant's legal advisors are available to confer with them regarding compliance with the Final Judgment and the antitrust laws. Further the Antitrust Compliance Officer must obtain from each such officer or employee, annual written certifications stating that he or she: (1) has read, understands, and agrees to abide by the terms of the Final Judgment; (2) has been advised and understands that his or her failure to comply with the Final Judgment may result in conviction for criminal contempt of court; and (3) is not aware of any violation of the Final Judgment that has not been reported to the Antitrust Compliance Officer. The Antitrust Compliance Officer must maintain a record of recipients to whom the Final Judgment has been distributed and from whom certifications have been obtained. He or she must also report to the Department of Justice any violation of the Final Judgment. Finally, the Antitrust Compliance Officer must also distribute copies of the Final Judgment to the owner or manager of each

automobile body repair shop, located within 50 miles of Casper, Wyoming, which is presently in business and has purchased parts or body repair services from the defendant in the last five years.

In addition to the prohibitions and obligations contained in Section IV and V, Nagel Motors, Inc., Greiner Motor Company, Inc. and Benson Chevrolet, Inc. are further obligated, under Section VI, to certify, within 75 days after the entry of the Final Judgment, that they have designated an Antitrust Compliance Officer and have distributed the Final Judgment in accordance with the Section V requirement. Section VI also requires Nagel Motors, Inc., Greiner Motor Company, Inc. and Benson Chevrolet, Inc., for a period of ten years after the entry of the Final Judgment, on or before its anniversary date, to file with the Government, a statement as to the fact and manner of compliance with the provisions of Section V of the Final Judgment.

B. Scope of the Proposed Final Judgment

Section VIII of the proposed Final Judgment provides that the Final Judgment shall remain in effect for ten years.

Section III of the proposed Final Judgment provides that the Final Judgment shall apply to Nagel Motors, Inc., Greiner Motor Company, Inc. and Benson Chevrolet, Inc. and to each of their successors, assigns, and to all other persons in active concert or

participation with any of them who shall have received actual notice of the Final Judgment by personal service or otherwise.

C. Effect of the Proposed Final Judgment on Competition

The relief set out in the proposed Final Judgment is designed to prevent recurrence of the activities alleged in the Complaint. The proposed Final Judgment's provisions are designed to remove the artificial restraints that the defendants have imposed on competition among automobile body repair shops and create an environment in which more vigorous competition may take place. It is intended to ensure that marketing and pricing decisions of Nagel Motors, Inc., Greiner Motor Company, Inc. and Benson Chevrolet, Inc. are made independently, without any discussions and conversations with each other. The Department of Justice believes that the proposed Final Judgment contains sufficient provisions to prevent further violations of the type alleged in the Complaint

IV.

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The alternative to the proposed Final Judgment would be a full trial of the case. In the view of the Department of Justice, such a trial would involve substantial cost to the United States and is not warranted because the proposed Final Judgment provides relief

that will remedy the violations of the Sherman Act alleged in the United States' Complaint.

V.

REMEDIES AVAILABLE TO 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 suffered, as well as costs and reasonable attorney's fees. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the Final Judgment has no prima facie effect in any subsequent lawsuits that may be brought against any defendant in this matter.

VI.

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 Gary R. Spratling, Chief, San Francisco Office, Department of Justice, Antitrust Division, 450 Golden Gate Avenue, San Francisco, California 94102, within the 60-day period provided by the Act. These comments, and the Government'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 the judgment is necessary to the public interest. The proposed judgment itself provides that the Court will retain jurisdiction over this action, and that the parties may apply to the court for such orders as may be necessary or appropriate for the modification or enforcement of the judgment.

VII.

DETERMINATIVE DOCUMENTS

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 the proposed judgment. Consequently, none are filed herewith.

Dated:

GARY R. SPRATLING

RICHARD B. COHEN

CARLA G. ADDICKS

Attorneys
U.S. Department of Justice