

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v.
VARIAN ASSOCIATES, INC. and
RICHARDSON ELECTRONICS, LTD.,
Defendants.

Civil Action No.: 91-C-6211

10/1/91

COMPETITIVE IMPACT STATEMENT

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I.

NATURE AND PURPOSE OF THE PROCEEDING

On Oct. 1, 1991, the United States filed a civil antitrust complaint under Section 4 of the Sherman Act, 15 U.S.C. § 4, alleging that defendants Varian Associates, Inc. ("Varian") and Richardson Electronics, Ltd. ("Richardson"), and

co-conspirators, engaged in two conspiracies to monopolize interstate trade and commerce in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2. The conspiracies reduced competition for the manufacture and sale in the United States of certain power grid tubes, resulting in increased domestic prices for these tubes.

Power grid tubes are high vacuum electron tubes that amplify and control electrical signals. Several industries employ power grid tubes in various applications, including television broadcasting, radio broadcasting, and industrial heating. Original equipment manufacturers ("OEMs") purchase power grid tubes for installation in new equipment. For this application, OEMs must purchase power grid tubes that are socket-interchangeable with the tubes the equipment is designed to use or redesign the equipment to use a different tube. Users of such equipment also purchase power grid tubes to replace tubes that break, fail, or wear out. Customers who purchase power grid tubes for replacement can use only tubes that are socket-interchangeable with tubes for which the original equipment was designed, unless the equipment is redesigned to use a different tube.

A dud tube is a power grid tube that is broken, damaged, spent, or otherwise incapable of operating, but that can be rebuilt. Some firms rebuild dud tubes and sell them as operational, rebuilt power grid tubes, which compete with new power grid tubes for replacement uses.

Varian is the largest manufacturer of power grid tubes in the world, and Richardson is the dominant or only distributor for virtually all manufacturers of power grid tubes that sell in the United States. Richardson is Varian's only United States distributor for replacement power grid tube sales. In February 1986, Varian and Richardson agreed to collect particular dud tubes that are socket-interchangeable with new power grid tubes produced by Varian and sold by Richardson for replacement uses, to keep the dud tubes from being rebuilt by tube rebuilders. In July 1988, Richardson acquired on behalf of itself and Varian a power grid tube manufacturer, Amperex Electronic Corporation ("Amperex"), and discontinued producing Amperex tubes that were socket-interchangeable with tubes produced by Varian, making Varian the dominant or only manufacturer of these tubes and seller of these tubes to OEMs in the United States and making Richardson the only or dominant seller of these tubes for replacement uses.

The Complaint alleges in Count I that beginning in or about February, 1986, the defendants and co-conspirators conspired to monopolize the manufacture and sale in the United States of power grid tubes that are socket-interchangeable with tubes that could be rebuilt from the particular dud tubes that defendants agreed to collect. The Complaint alleges that the effects of this conspiracy are that competition in the United States for sales of such power grid tubes has been reduced or eliminated and that domestic prices for such tubes have increased.

The Complaint alleges in Count II that the defendants and co-conspirators combined and conspired to monopolize the manufacture and sale of power grid tubes that are socket-interchangeable with power grid tubes of the types that prior to July 1988 were produced by both Varian and Amperex. The Complaint alleges that the effects of this conspiracy are that competition for sales in the United States of such power grid tubes has been eliminated and that domestic prices for such tubes have increased.

The United States and defendants have stipulated that the Court may enter the proposed Final Judgment, which is designed to halt these conspiracies and help undo their anticompetitive effects, after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h). 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. Entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction over the matter for any further proceedings necessary to interpret, enforce, or modify the Judgment, or to punish violations of any provisions of the Judgment.

II.

DESCRIPTION OF THE PRACTICES
INVOLVED IN THE ALLEGED VIOLATION

On or about February 26, 1986, Varian and Richardson formed Varian Supply Company ("VASCO"), a joint venture partnership organized under the laws of the State of California and having its principal offices in LaFox, Illinois. In the VASCO joint venture agreement, Varian made Richardson its only United States distributor for the sale of power grid tubes for replacement uses. The VASCO joint venture agreement contained a provision stating, "Upon request by Varian, Richardson shall conduct an aggressive program to purchase tube carcasses [dud tubes]." Pursuant to this provision, defendants agreed to acquire dud tubes that are socket-interchangeable with power grid tubes produced by Varian and sold by Richardson in the United States for replacement uses. The purpose of their agreement was to reduce or eliminate the supply of these dud tubes to tube rebuilders in order to reduce or eliminate competition from tube rebuilders and enable defendants to increase their prices for new power grid tubes that are socket-interchangeable with tubes that could be rebuilt from these dud tubes. Beginning about January 1988, pursuant to its agreement with Varian, Richardson acquired from time to time a significant number of such dud tubes and continued to do so until about August 1988.

Defendants also agreed to use VASCO as a vehicle to acquire competing manufacturers and distributors of power grid tubes.

In 1988, defendants agreed to have VASCO acquire Amperex, a tube manufacturer that competed with Varian for the sale of many types and sizes of power grid tubes. Pursuant to this agreement, Richardson acquired Amperex in or about July 1988. Following the acquisition, Richardson discontinued the manufacture of Amperex power grid tube types that had competed directly with Varian tube types, making Varian the only or the dominant manufacturer of such tube types.

After January 1988, defendants increased their prices for power grid tubes that are socket-interchangeable with tubes that could be rebuilt from the particular dud tubes that Richardson collected pursuant to its agreement with Varian, and after the Amperex acquisition, they also increased their prices for power grid tubes that are socket-interchangeable with power grid tubes of the types that prior to July 1988 were produced by both Varian and Amperex.

III.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment is intended to prevent and restrain defendants from engaging in activity in furtherance of (a) their conspiracy to monopolize the manufacture and sale of power grid tubes that are socket-interchangeable with tubes that could be rebuilt from the particular dud tubes that defendants agreed to collect and (b) their conspiracy to monopolize the manufacture and sale of power grid tubes that are socket-interchangeable with tubes of the types that prior

to July 1988 were produced by both Varian and Amperex. The proposed Final Judgment also would require the defendants to take action designed to dissipate the effects of the conspiracies.

A. Prohibitions and Obligations

Under the Final Judgment, defendants would be required to dissolve VASCO and terminate all sales made by or through VASCO immediately upon entry of the Final Judgment and to wind up the business of VASCO within thirty (30) days after the entry of the Final Judgment. Thereafter, defendants would be prohibited from taking any action, either directly or indirectly, to reconstitute VASCO without first obtaining the written consent of the Antitrust Division of the Department of Justice. The Final Judgment also would prohibit Varian from granting to Richardson, either directly or indirectly, any exclusive distribution rights in the United States for any Varian power grid tubes. It further would prohibit Varian from granting to Richardson, either directly or indirectly, distribution rights in the United States for any Varian power grid tubes that are more favorable than Varian grants to any other person.

In addition, the Final Judgment would prohibit certain activity by the defendants regarding the acquisition of dud tubes. The defendants would be prohibited from discussing or agreeing, either directly or indirectly, to any price at which either defendant purchases or will purchase any dud tubes from

any third party. The defendants would be further prohibited from purchasing or otherwise acquiring, either directly or indirectly, any power grid tube that the acquiring defendant knows or reasonably expects to be a dud tube for the purpose of increasing the cost of, or decreasing competition from, any tube rebuilders. The Judgment provides that a dud tube would be deemed to have been acquired for at least one of the two prohibited purposes unless it was acquired with the written consent of the Antitrust Division of the Department of Justice or was acquired under certain limited circumstances described in the Judgment. The limited circumstances are designed to allow the defendants to make bona fide purchases of dud tubes for research, rebuilding, or recycling in connection with their power grid tube businesses. The Judgment also would require each defendant to prepare and maintain, for each dud tube it acquires after entry of the Final Judgment, contemporaneous, accurate, and detailed records of the acquisition, handling, and disposition of the tube. Absent such records clearly demonstrating that one of the limited exceptions apply to a dud tube acquisition, the acquiring defendant would be rebuttably presumed to have violated the Judgment's prohibition against acquiring dud tubes.

Moreover, the Final Judgment would prohibit the defendants from combining with their competitors. Neither defendant would be allowed, either directly or indirectly, to merge or consolidate with, or to acquire securities or a significant

amount of the power grid tube assets of, any company that manufactures, rebuilds, or distributes power grid tubes, without first obtaining the written consent of the Antitrust Division of the Department of Justice. The Final Judgment defines a "significant amount of the power grid tube assets" of a company in a manner that would prohibit all competitively important asset purchases. This prohibition of the Final Judgment also would not apply to the acquisition of securities in the usual and ordinary course of business for both the seller and purchaser or, under certain circumstances, by an individual or a corporate pension fund.

Finally, the Final Judgment would prohibit the defendants from engaging in other conduct that either is or, depending on the circumstances, could be anticompetitive. The defendants would be prohibited from sharing any profits from the sale of any power grid tubes in the United States, without first obtaining the written consent of the Antitrust Division. The defendants also would not be allowed, either directly or indirectly, to discuss or agree upon any price at which either Richardson or Varian sells or will sell to any third party any power grid tubes not manufactured by Varian, to agree on any price or price level at which Richardson, as principal, will sell to any third party any power grid tubes manufactured by Varian, or to agree on any prices or price levels at which Varian sells or will sell to any third party any power grid tubes manufactured by Varian. This latter prohibition would

not apply where Richardson is acting as Varian's agent in connection with any sales in the United States to any federal, state, or local governments, any original equipment manufacturers, or any academic or other research facilities.

The Final Judgment would allow an authorized representative of the Department of Justice to visit defendants' offices, after providing reasonable notice, to inspect their records and to conduct interviews regarding any matters contained in the Final Judgment. Defendants also would be required, upon request, to submit written reports, under oath, pertaining to any matters contained in the Final Judgment.

The Final Judgment also would obligate each defendant to establish and implement a plan for monitoring compliance with the terms of the Final Judgment by its officers, directors, agents, managers, and other employees. Defendants would have to file with the Court and provide plaintiff, within ninety (90) days after entry of the Final Judgment, an affidavit stating that the defendants have complied with the terms of the Final Judgment and stating the manner of their compliance.

B. Effect of The Proposed Final Judgment On Competition

The relief in the proposed Final Judgment is designed to bring to a halt defendants' conspiracies to monopolize particular power grid tubes and to help restore competition to the power grid tube industry. The provision dissolving VASCO, the injunction against Varian granting Richardson any exclusive

distribution rights in the United States, and the injunction against Richardson obtaining more favorable distribution rights in the United States will allow for competition in the domestic distribution of Varian power grid tubes.

The prohibitions relating to the acquisition of dud tubes are designed to keep Varian or Richardson from limiting or reducing competition from tube rebuilders in the manufacture and sale in the United States of power grid tubes. The prohibitions seek to ensure that Varian and Richardson purchase dud tubes only for legitimate purposes and not for the purpose of reducing the supply of tube carcasses available to rebuilders. The injunction against mergers and acquisition by either defendant is designed to prevent them from causing further consolidation of the power grid tube industry without the consent of the Antitrust Division.

The injunctions against pricing discussions and agreements are designed to prohibit either defendant from influencing the price at which the other defendant sells power grid tubes, whether those tubes are produced by Varian or by manufacturers other than Varian. The injunction against defendants sharing any profits from the sale of any power grid tubes in the United States is designed to ensure that Richardson's incentives to distribute tubes produced by other manufacturers are not influenced by Varian, beyond the price it charges Richardson for Varian tubes.

The Final Judgment provides the Department of Justice with sufficient powers to monitor the defendants' compliance. The Department of Justice believes that the proposed Final Judgment contains adequate provisions to remedy the effects of the alleged conspiracies, promote competition in the sale of power grid tubes in the United States, and prevent further violations of the type alleged in the Complaint.

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 suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuits that may be brought against defendants in this matter.

V.

PROCEDURES AVAILABLE FOR
MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments

regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and responses of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to P. Terry Lubeck, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, Judiciary Center Building, Room 10-437, 555 4th Street, N.W., Washington D.C. 20001.

The proposed Final Judgment provides that the Court would retain jurisdiction over this action and that any party to the Final Judgment may apply to the Court for any order necessary or appropriate for the construction, implementation, or modification of any provisions of the Final Judgment, for the enforcement of compliance with any provisions of the Final Judgment, and for the punishment of any violation of the Final Judgment.

VI.

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The only alternative to the proposed Final Judgment would be a full trial of the case. The Department of Justice, believes, however, that such litigation, which would take a long time to finally resolve and would involve substantial cost

to the United States, is not warranted since the proposed Final Judgment provides essentially all of the relief the government would be likely to obtain after a trial on the merits.

Under the circumstances, the United States determined that the public interest would be served best by obtaining an enforceable consent decree and filing the decree with the Court immediately. Although the proposed Final Judgment may not be entered until the criteria established by the APPA have been satisfied, the prohibitions of the Final Judgment will take effect immediately because the defendants have stipulated that they will comply with the terms of the Final Judgment, except for the provision that would dissolve VASCO, pending its entry by the Court.

VII.

DETERMINATIVE MATERIALS AND DOCUMENTS

The United States considers the Distributor Agreement Between Varian Associates, Inc. and Richardson Electronics, Ltd., dated August 8, 1991 ("Distributor Agreement"), which will replace the VASCO joint venture agreement, to be a determinative document. The Distributor Agreement not only describes the terms of Varian and Richardson's future relationship, but also describes some terms of any relationship between Varian and any other United States distributor. The Distributor Agreement was determinative in formulating the

proposed Final Judgment. Accordingly, the United States will file a copy of it with this Competitive Impact Statement.

Dated:

Respectfully submitted,

Michael L. Scott

Kevin Quirk

Attorneys, Antitrust Division
U.S. Department of Justice
Room 10-437
555 4th Street, N.W.
Washington, D.C. 20001
(202) 307-0939