

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GENERAL BINDING CORPORATION, and
VELOBIND INCORPORATED,

Defendants.

Civil Action No.

91 1822

HARRIS, J. SSH

JUL 24 1991

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 July 24, 1991, the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, 15 U.S.C. § 25, alleging that the proposed acquisition of VeloBind Incorporated ("VeloBind") by General Binding Corporation ("GBC") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The complaint alleges that the effect of the acquisition may be substantially to lessen competition in the manufacture and sale in the United States of high-volume binding machines, which are

electric machines that can easily and securely bind numerous documents up to three inches thick in a professional-looking manner. GBC is the largest domestic seller of these machines, and VeloBind is the second largest.

The United States, GBC, and VeloBind have consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects likely to result if GBC acquires VeloBind. As explained more fully below, GBC has entered into two contracts with Gestetner Corporation ("Gestetner") that would make Gestetner a viable competitor in the sale of high-volume binding machines in the United States, and the proposed Final Judgment would prevent GBC from altering its arrangement with Gestetner without the permission of the United States.

The United States, GBC, and VeloBind have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the government withdraws its consent. The proposed Final Judgment constitutes no admission by any party as 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 a determination by the Court that the proposed Final Judgment is in the public interest. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations of the Final Judgment.

II.

EVENTS GIVING RISE TO THE ALLEGED VIOLATION

On September 22, 1990, GBC and VeloBind entered into a definitive merger agreement in which GBC proposed to acquire VeloBind for approximately \$50 million. GBC and VeloBind both manufacture high-volume binding machines and related supplies, which they sell throughout the United States.

GBC's principal high-volume binding machines use a plastic comb that is inserted through nineteen rectangular holes punched in the paper. VeloBind's machines use a plastic strip with eleven circular posts that are inserted through holes punched in the paper and then melted onto an opposing strip to produce a secure bind. Other types of high-volume binding machines use thermally sealed adhesive tape, wires, or clamps to bind the paper.

The complaint alleges that the manufacture and sale of high-volume binding machines is a relevant product market for antitrust purposes. Other forms of binding are not adequate substitutes for high-volume binding machines. Some binding methods, such as strip-stapling, perfect binding, or stitching, require capital investments significantly greater than the high-volume machines manufactured by GBC and VeloBind. Other binding methods, such as paper clips and ordinary stapling, do not produce the professional-looking binds available from machines. Still other methods tend to be significantly more expensive and more cumbersome for high-volume use. Fully manual

machines, while producing an end-product similar or identical to the high-volume machines, are not suitable for binding numerous documents.

GBC's market share of about 68 percent makes it the largest seller of high-volume binding machines in the United States. VeloBind's share of about 20 percent makes it the second largest seller of high-volume binding machines. After the acquisition, their combined market share would be about 88 percent. The transaction would cause the Herfindahl-Hirschman Index, 1/ a measure of market concentration, to increase by at least 2686 points to at least 7717.

Entry into the manufacture and sale of high-volume binding machines is difficult and time-consuming. GBC has established an effective distribution system consisting of dedicated distributors and in-house sales offices, which provide buyers with various services that are essential to GBC's sales success,

1/ The Herfindahl-Hirschman Index ("HHI") is a measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30%, 30%, 20%, and 20%, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI, which takes into account the relative size and distribution of the firms in a market, ranges from virtually zero to 10,000. The index approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between the leading firms and the remaining firms increases.

including on-site demonstrations, emergency repair services and in many cases access to graphics expertise. To design and manufacture a machine and to establish such a distribution system would require two or more years.

Further, the plastic strips used in VeloBind high-volume binding machines are protected by a patent, which will not expire until the year 2000. The demand for high-volume plastic strip-binding machines is closely linked to the demand for plastic strips, and hence to the prices and availability of plastic strips. Thus, entry into the manufacture and sale of plastic strip-binding machines is difficult.

III.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States brought this action because the effect of the proposed acquisition of VeloBind by GBC may be substantially to lessen competition in the domestic high-volume binding machine market. The transaction would eliminate actual and potential competition between VeloBind and GBC and lessen competition generally in this market. In particular, after the acquisition GBC could increase strip-binding prices significantly without fear of substantial loss of customers, because many customers who would switch to other products in response to such a price increase would switch to GBC's comb

products. These risks to competition posed by this acquisition would be substantially eliminated by the relief provided in the proposed Final Judgment.

Specifically, the proposed Final Judgment would provide that GBC would have to obtain the permission of the United States before GBC could change any of the terms of the two contracts it entered into with Gestetner, a large international distributor of office equipment and supplies. One of these two contracts is a supply agreement pursuant to which GBC would sell to Gestetner substantial quantities of high-volume strip-binding machines and related plastic strips that are compatible with those currently sold by VeloBind. It is contemplated that Gestetner will then resell those items under a private label in competition with GBC. The other contract is a license agreement that grants Gestetner the exclusive right at a favorable royalty to produce the patented plastic strips. If exercised, the license agreement would enable Gestetner to manufacture the plastic strips itself or to obtain them from another manufacturer. An addendum to the supply agreement, dated July 15, 1991, insures that if Gestetner exercises its rights under the license agreement, it will not be obligated to purchase any machines from GBC. All of the agreements will expire in January 2000, the expiration date of the plastic strip patent.

The supply and license agreements should enable Gestetner, which sells other large, private label office products, to compete successfully with GBC. The prices it will pay to

purchase the machines and strips from GBC under the supply agreement are substantially below VeloBind's current dealer prices, and future price increases are limited by the agreement. These favorable prices should permit Gestetner to sell strip-binding machines and related supplies at competitive prices. In the event that GBC fails to supply Gestetner's demands for strip-binding machines and supplies, the supply agreement provides that Gestetner will receive a royalty-free license of VeloBind's basic patent covering the manufacture of strips and the necessary know-how to permit it to manufacture machines and strips.

The license agreement also assures that Gestetner will be a new, viable competitor sufficient to deter or counteract any new diminution in competition caused by the merger. Gestetner may exercise the license agreement at any time and for any reason. The license agreement would enable Gestetner to quickly begin manufacturing the patented strips. If the license is exercised, the rights, duties, and obligations under the supply agreement remain intact. However, if Gestetner exercises the license agreement, it is no longer under any obligation to purchase any machines from GBC. In that event, Gestetner could also manufacture the machines, since no significant patents cover them.

An additional provision of the Final Judgment would prohibit GBC from reaching an agreement with Gestetner regarding the quantities or prices or terms at which either Gestetner or GBC

would sell high-volume binding machines or related supplies or from even discussing such prices with Gestetner.

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 the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust 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 private lawsuit that may be brought against the defendants.

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 would provide that the Court would retain jurisdiction over this action and that any party may apply to the Court for any order necessary or appropriate for its modification, interpretation, or enforcement.

VI.

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The only alternative to the proposed Final Judgment the United States considered was to file suit and seek an injunction that would block GBC's acquisition of VeloBind. The United States rejected this alternative because the supply and license agreements, backed up by the proposed Final Judgment, should establish Gestetner as a viable, effective competitive presence in the domestic high-volume binding machine market, thus preventing the acquisition from having a significant anticompetitive effect in that market. The government believes that Gestetner could quickly obtain a substantial share of the high-volume binding machine market. Gestetner, which has numerous outlets nationwide, currently is engaged in on-site sales of office equipment. The firm is also very familiar with the VeloBind product line, having been a distributor of VeloBind products in the United States until the late 1980's. Under its supply agreement with GBC, Gestetner will be able to obtain a

supply of high-volume plastic strip-binding machines and plastic strips at very attractive prices. Moreover, Gestetner has the option, at any time during the duration of the supply agreement, to exercise the license agreement. Thus, at its own option, Gestetner could begin producing both the patented plastic strips and strip-binding machines, for which no significant patent protection exists.

Under the circumstances, the United States determined that the public interest in preserving competition in the United States high-volume mechanized binding market would be served best by obtaining an enforceable consent decree and filing the decree with the Court prior to the consummation of any part of the proposed acquisition. Although the proposed Final Judgment may not be entered until the criteria established by the APPA have been satisfied, the safeguards of the Final Judgment will begin immediately because the defendants have stipulated that they will comply with the terms of the Final Judgment pending its entry by the Court.

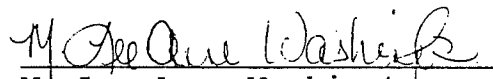
VII.


DETERMINATIVE MATERIALS AND DOCUMENTS

The United States considers the supply agreement and corresponding addendum and the license agreement between GBC and Gestetner to be determinative documents. These contracts include the terms of the proposed relationship between GBC and Gestetner and were determinative in formulating the proposed Final Judgment. Accordingly, the United States will file copies of them with this Competitive Impact Statement. The information in the supply agreement relating to specific prices at which Gestetner can purchase high-volume binding machines and plastic strips is highly confidential and has been redacted. The United States will file an unredacted copy of the supply agreement with the Court, under seal.

Dated: July 23, 1991

Respectfully submitted,


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