

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROCKWELL INTERNATIONAL
CORPORATION and ROCKWELL
INTERNATIONAL HOLDINGS
LIMITED,

Defendants.

Civil Action No. 80-1401

COMPETITIVE IMPACT STATEMENT

Filed: September 30, 1980

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. §16(b)), the United States hereby submits 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 September 30, 1980, the United States filed a complaint alleging that the acquisition by defendant Rockwell International Corporation ("Rockwell"), through defendant Rockwell International Holdings Limited ("RIHL"), of approximately 30% of the stock of Serck Limited ("Serck") violated Section 7 of the Clayton Act. Entry by the Court of the proposed final judgment will terminate this action. The Court will retain jurisdiction over this matter for such further

proceedings as may be required to interpret, modify or enforce the proposed judgment, or to punish violations thereof.

II.

DESCRIPTION OF THE ALLEGED VIOLATION

Rockwell is a large, diversified corporation that had sales in excess of \$6.1 billion in its 1979 fiscal year. It is one of the nation's largest manufacturers of industrial valves. RIHL, a Delaware corporation, is a wholly-owned subsidiary of Rockwell. Serck is a British company whose major business is the manufacture of industrial valves. In 1979, it had sales of approximately \$219 million. Serck's operations in the United States are conducted through its wholly-owned subsidiary, Serck Incorporated, which has its principal place of business in Houston, Texas.

On February 1, 1980, Rockwell, through RIHL, purchased 29.7% of Serck's outstanding shares. It then initiated a tender offer to acquire the remaining shares. On April 17, 1980, the United States Department of Justice announced that it would file suit to enjoin the acquisition of the remaining shares if Rockwell persisted with the tender offer. Shortly thereafter, Rockwell withdrew the tender offer and no suit was filed. However, the Department continued to investigate whether Rockwell's acquisition of nearly 30% of Serck's stock violated Section 7 of the Clayton Act. In the course of this investigation, counsel

for the defendants and for the Department entered into negotiations aimed at resolving this matter without the expense of extended litigation. These discussions have resulted in the proposed final judgment, which has been filed with the Court simultaneously with the filing of the government's complaint against the defendants.

Had this case gone to trial, the government would have contended that Rockwell's acquisition, through RIHL, of the Serck stock violated Section 7 of the Clayton Act in that it may substantially lessen competition in the domestic market for lubricated plug valves and the submarket for lubricated tapered plug valves. The lubricated plug valve product market consists of lubricated tapered plug valves and lubricated cylindrical plug valves. Lubricated plug valves are used for flow control purposes in a variety of industrial applications, including oil and gas production, processing, transmission, and distribution. Lubricated plug valves are the valve of choice in many applications due to favorable design characteristics such as quarter-turn operation (i.e., a lubricated plug valve can be turned on or off by moving the handle through a 90 degree arc), durability, bubbletight shutoff, fire safety, and a seal that can be restored in-service through the injection of additional lubricant. Lubricated tapered plug valves differ from lubricated cylindrical plug valves in sufficient degree to constitute a separate submarket of the overall lubricated plug valve market.

The lubricated plug valve market is highly concentrated, with Rockwell the dominant company in the market. In 1979, approximately \$57 million of lubricated plug valves were sold in the United States. Rockwell's sales of lubricated tapered plug valves (it does not manufacture lubricated cylindrical plug valves) accounted for approximately 83.5% of the total sales of lubricated plug valves. The lubricated tapered plug valve submarket is also highly concentrated, and Rockwell is also the dominant company in that submarket. Its sales of such valves accounted for approximately 94% of the \$50.7 million of lubricated tapered plug valves sold in the United States in 1979.

Serck is, after Rockwell, the second largest manufacturer of lubricated tapered plug valves in the world. Serck is the leading manufacturer of such valves outside the United States and is Rockwell's main competitor in the international market. Since at least 1977, Serck has been trying to expand into the United States, the world's largest market for lubricated tapered plug valves, by means of an acquisition or joint venture that would enable it to manufacture such valves domestically. Serck has been selling lubricated tapered plug valves in the United States since 1977 through various companies, including Serck Incorporated. In 1979, Serck Incorporated's sales of lubricated tapered plug valves accounted for less than 1% of the domestic sales of lubricated plug valves or lubricated tapered plug

valves. Given Serck's position in the international market and its plans for expansion in the United States, Serck is the most significant and probable entrant into the manufacture of lubricated tapered plug valves in the United States.

Rockwell's acquisition, through RIHL, of nearly 30% of Serck's stock makes Rockwell the largest shareholder in Serck and gives it the power to exercise great influence, if not actual working control, over Serck. Additionally, uncertainty has been created in the minds of potential joint venture partners with Serck (in a domestic valve manufacturing plant) by Rockwell's ownership of this large block of stock and the possibility that, unless restrained by the proposed final judgment, Rockwell may renew its attempt to acquire all of Serck. This uncertainty has had an adverse impact on Serck's efforts to enter into the domestic manufacture of lubricated tapered plug valves.

The government would have contended at trial that Rockwell's acquisition of the Serck stock violated Section 7 in several ways. First, actual competition between Rockwell and Serck will be eliminated and actual competition in the lubricated plug valve market and the lubricated tapered plug valve submarket may generally be substantially lessened. While Serck's sales of lubricated tapered plug valves account for less than 1% of domestic sales, Serck's United States market share understates its competitive potential, given its stated plans to enter into domestic lubricated tapered plug valve production. Second,

potential competition may be substantially lessened by the acquisition, which eliminates Serck as an independent actual potential entrant into the manufacture of lubricated tapered plug valves in the United States. Finally, the acquisition also adversely affects the procompetitive influence that Serck has had on the domestic market by the perception that existed of it as a potential entrant into domestic manufacturing.

III.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and the defendants have agreed in a stipulation that the proposed final judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The final judgment provides that there has been no admission by any party with respect to any issue. Under the provision of Section 2(e) of the Antitrust Procedures and Penalties Act, entry of this judgment is conditioned upon a determination by the Court that the proposed judgment is in the public interest.

The terms of the Final Judgment require that Rockwell and RIHL divest themselves of all the Serck shares that each owns or

controls, either directly or indirectly, within four years of entry of the final judgment. If Rockwell and RIHL have not completed divestiture within the required time period, the Court will appoint a Trustee to accomplish the divestiture. The Trustee will sell all of Rockwell's or RIHL's remaining shares of Serck at such price and terms as may be required to effect the sale within three months after the date of his appointment.

Pending divestiture of the Serck shares, neither Rockwell nor RIHL will be permitted to (a) vote or permit to be voted the Serck shares that Rockwell or RIHL owns or controls, directly or indirectly; (b) be represented directly or indirectly on Serck's Board of Directors; (c) communicate with Serck directly or indirectly for the purpose of controlling or influencing, or seeking to control or influence, Serck; or (d) acquire any equity interest in Serck that would increase Rockwell's and RIHL's aggregate holding of the Serck shares beyond 29.7% of the total outstanding shares of Serck. The latter provision permits Rockwell and RIHL to acquire such additional equity interest in Serck as may be necessary to avoid the dilution of their 29.7% ownership interest pending divestiture. Of course, any additional equity purchased by the defendants would be subject to the restriction on voting and the divestiture requirement.

Additionally, during the effective period of the judgment (but only as long as Rockwell continues to be a competitor in

the domestic lubricated plug valve market), Rockwell and RIHL are prohibited from acquiring or purchasing, without the permission of the Antitrust Division, (a) any equity interest in Serck (except as explained in the preceding paragraph), (b) more than one percent of the equity interest in any person that manufactures, distributes or sells lubricated plug valves in the United States, or (c) any assets of any person used in the manufacture, distribution or sale of lubricated plug valves in the United States. Furthermore, neither Rockwell nor RIHL may acquire any assets of Serck, wherever located, that are utilized in the manufacture, distribution, or sale of lubricated plug valves, unless it obtains the permission of the Antitrust Division or the Court. The permission of the Court will be granted upon a showing by Rockwell or RIHL that the acquisition of assets will not violate the antitrust laws of the United States.

In order to ensure that the defendants comply with the provisions of the judgment, Paragraph VII sets forth procedures under which representatives of the Department of Justice will be permitted to inspect and copy the defendants documents and to interview their officers, employees, or agents. This paragraph also requires that the defendants submit written reports when requested by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division. The term of the Final Judgment is 10 years.

IV.

ALTERNATIVES CONSIDERED TO THE PROPOSED FINAL JUDGMENT

The United States initially sought divestiture by the defendants of the Serck shares within a shorter period of time than four years. However, given the uncertainties and delays of litigation, the United States believes that four years for divestiture of the stock provides adequate relief in light of the fact that the defendants are prohibited by the judgment from exercising any control or influence over Serck pending divestiture.

The United States also initially considered requiring approval by the Department of Justice over any sale of the Serck stock pursuant to the divestiture obligation. The approval requirement was dropped when it became apparent that it might impede the defendants' ability to dispose of the stock without materially advancing the United States' interests. If an antitrust issue is raised by the identity of a purchaser of the divested stock, certain delays required by English procedure (Serck is an English corporation) governing mergers and take-overs should provide the Department of Justice with sufficient time to evaluate the competitive implications, if any, of the sale before the purchaser can effect a merger or take-over of Serck.

The relief in the final judgment will restore the competition that may have been substantially lessened by the defendants' stock acquisition. In addition to restoring Serck as a fully independent competitor, the final judgment will restrict Rockwell's ability to make other acquisitions that might lessen competition in the lubricated plug valve market and the lubricated tapered plug valve submarket.

The government considered the possibility of a full trial on the merits as an alternative to the proposed final judgment. However, a trial would involve substantial expense, as well as a commitment of staff which otherwise could be devoted to other enforcement activities. In addition, it is felt that the proposed final judgment will provide essentially the same relief the government would have obtained had it been successful at trial.

V.

REMEDIES AVAILABLE TO PRIVATE PLAINTIFFS

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 or equitable remedies that they would have had were the proposed final judgment not entered. However, pursuant to Section 5(a) of the Clayton Act (15 U.S.C. §16(a)), this judgment may not be used as prima facie evidence in private litigation.

VI.
PROCEDURES AVAILABLE FOR MODIFICATION
OF THE PROPOSED JUDGMENT

The proposed final judgment is subject to a stipulation by and between the United States and the defendants that provides that the United States may withdraw its consent to the judgment at any time until the Court has found that entry of the judgment is in the public interest. By its terms, the final judgment provides for the Court's retention of jurisdiction in order, among other reasons, to permit 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 Section 2(b) of the Antitrust Procedures and Penalties Act, any person wishing to comment on the proposed consent judgment may, for the sixty (60) day period prior to the effective date of the Judgment, submit written comments to:

John W. Clark, Chief
Special Trial Section
Antitrust Division, Department of Justice
Washington, D.C. 20530

The comments, and the responses thereto, will be filed with the Court and published in the Federal Register. The Department of Justice will evaluate all comments and determine whether there is any reason for withdrawal of its consent to the judgment.

VII.

DETERMINATIVE DOCUMENTS

Since there are no materials or documents which were determinative in formulating a proposal for the consent judgment, none are being filed by the United States pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act.


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