

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
) Civil No. 4-71922
 v.)
)
 BEATRICE FOODS CO.;) COMPETITIVE IMPACT STATEMENT
 OLSONITE CORPORATION;)
 BEMIS MANUFACTURING COMPANY; and)
 STANDARD TANK & SEAT CO.,) *filed:* AUG 11 1977
)
 Defendants.)

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 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 OF THE PROCEEDING

On June 19, 1974, the United States filed a civil complaint under Section 4 of the Sherman Act (15 U.S.C. § 4), alleging that the defendants violated Section 1 of the Sherman Act (15 U.S.C. § 1). The Complaint alleges that the defendants and various co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate commerce, i.e., to raise, fix, maintain and stabilize the prices of popular priced wood flour toilet seats in the United States.

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

II

DESCRIPTION OF PRACTICES INVOLVED IN THE ALLEGED VIOLATION

Wood flour toilet seats, including popular priced wood flour toilet seats, are manufactured and sold by the defendants. The popular priced wood flour toilet seats manufactured by the defendants are comparable products and are sold as new or replacement seats for residential or commercial purposes. The defendants sell these toilet seats through manufacturers' representatives to plumbing wholesalers and jobbers, plumbing contractors, general contractors, department stores, and discount houses located throughout the United States. The seats shipped to such customers are for use in specific projects or for resale.

Defendant Beatrice Foods Company has its principal place of business in Chicago, Illinois and its toilet seat manufacturing plant in Columbus, Mississippi. Defendant Olsonite Corporation, with its principal place of business in Detroit, Michigan, manufactures its toilet seats in Michigan, Georgia, and California. Defendant Bemis Manufacturing Company has its principal place of business and its toilet seat manufacturing plant in Sheboygan Falls, Wisconsin. Defendant Standard Tank & Seat Company is now out of business, having sold its assets in part to defendant Bemis. Its principal place of business and toilet seat manufacturing plant were in Camden, New Jersey.

The Complaint alleges that the defendants and co-conspirators engaged in a conspiracy to raise, fix, maintain and stabilize the prices of popular priced wood flour toilet seats in the United States. The defendants carried out the alleged conspiracy in several ways, including:

(a) Holding meetings at various times at different locales and during conventions of the Southern Wholesalers Association and American Supply Association at hotels, motels, apartments and clubs, at which time the defendants and co-conspirators:

(i) agreed to increase the prices of popular priced wood flour toilet seats;

(ii) agreed to issue identical price lists for popular priced wood flour toilet seats;

(iii) agreed to stagger the date of letters announcing new price increases for popular priced wood flour toilet seats;

(iv) policed adherence to the agreed upon published prices of popular priced wood flour toilet seats;

(b) Publishing price announcements and price lists which included the prices of popular priced wood flour toilet seats in accordance with the aforesaid agreements;

(c) Telephoning and otherwise contacting one another between meetings concerning:

- (i) increased prices on popular priced wood flour toilet seats; and
- (ii) deviations from agreed upon published prices of popular priced wood flour toilet seats.

According to the Complaint, the alleged conspiracy had the following effects: (a) prices of popular priced wood flour toilet seats sold by the defendants were raised, fixed, maintained and stabilized at non-competitive levels; and (b) customers of the defendants were deprived of the opportunity to purchase popular priced wood flour toilet seats in an open and competitive market.

III

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and the defendants have agreed in a Stipulation that a Final Judgment, in a form negotiated by the parties, may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The Stipulation provides that there has been no admission by either party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, entry of said Final Judgment by the Court is conditioned upon a determination by the Court that the proposed Final Judgment is in the public interest.

A. Prohibited Conduct

The proposed Final Judgment prohibits the defendants from entering into or adhering to any agreements or arrangements

with any manufacturer of toilet seats to raise, fix, stabilize or maintain the price, discounts, markup, or any other term or condition with respect to the sale of any toilet seat to any third person. The proposed Final Judgment also prohibits defendants from furnishing to or requesting from any other manufacturer of toilet seats any information concerning any price, discount, markup, term, or condition with respect to the sale of any toilet seat unless the information in question has been made generally available to the trade.

B. Scope of the Proposed Judgment

The proposed Final Judgment expressly provides the maximum coverage permitted by law. It is applicable to all defendants and to each of the defendants' officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who have received actual notice of the Final Judgment by personal service or otherwise.

Further, the proposed Final Judgment provides that each defendant shall take affirmative steps, including the issuance of written directives, distribution of the Final Judgment, and the holding of meetings to advise all of its personnel involved in establishing prices or bids for toilet seats of their obligations under the Final Judgment. The proposed Final Judgment provides that each defendant, for five years, shall cause a copy of the Final Judgment to be distributed at least once each year to personnel responsible for establishing prices. Such extensive service of the decree will effectively insure that all persons or entities who are in a position to act with the defendants in any future conduct prohibited by the proposed Final Judgment can be punished for violations of the decree.

A Stipulation filed with the proposed Final Judgment relieves defendant Standard Tank & Seat Co. of these affirmative steps since this defendant is no longer engaged in the manufacture or sale of toilet seats.

C. Effect of the Proposed Final Judgment on Competition

The relief encompassed in the proposed Final Judgment is aimed at preventing any recurrence of the activities alleged in the Complaint. Such activities interfere with the normal interplay of competitive forces in the marketplace, and accordingly result in artificially determined price levels. Entry of the proposed Final Judgment will insure that each defendant's prices, discount terms, and terms and conditions of sale for all toilet seats, not merely the type of seat mentioned in the Complaint, are arrived at independently. The proposed Final Judgment requires the defendants to submit sworn statements, for five years, outlining the steps they have taken to comply with the provisions of the proposed Final Judgment, and the Government is given access, upon reasonable notice, to the records of the defendants to monitor the defendants' compliance with the provisions of the proposed Final Judgment.

Moreover, the proposed Final Judgment requires each defendant to give notice to all its customers of entry of the Final Judgment, and of the terms of the Final Judgment. This provision will alert such customers to the existence of the Final Judgment, and will make it more likely that any violation of the Final Judgment will be brought to the attention of the United States.

Accordingly, it is the opinion of the Department of Justice that the proposed Final Judgment is fully adequate

in terms of its prohibitory provisions, as well as its enforcement provisions, to insure that toilet seat prices are determined in a free and competitive market. It is also the opinion of the Department that disposition of the matter without further litigation is appropriate in view of the fact that the proposed Final Judgment includes the form and scope of relief equal to that which might be obtained after a full airing of the issues at trial.

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 such person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment in this proceeding will neither impair nor assist the bringing of any such 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 subsequent private lawsuits which may be brought against these defendants.

V

PROCEDURES AVAILABLE FOR THE MODIFICATION OF THE PROPOSED FINAL JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person who wishes to comment upon the proposed Final Judgment may submit written comments to Joseph H. Widmar, Chief, Trial Section, Antitrust Division, United States Department of Justice, Washington, D. C. 20530

within the 60-day period provided by the Act. These comments and the 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 Final Judgment at any time prior to its entry if it should determine that some modification of the Final Judgment is necessary.

VI

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

This case does not involve any unusual or novel issues of fact or law which make litigation a more desirable alternative than entry of this consent decree. The Department considers the substantive language in the proposed Final Judgment to be of sufficient scope and effectiveness to make litigation on relief unnecessary as the proposed Final Judgment provides the substantive relief which was requested in the Complaint.

In negotiating this decree, the defendants sought to obtain additional exceptions in Paragraph V of the proposed Final Judgment to allow price discussions in negotiating patents and in petitioning regulatory bodies. The defendants also sought to restrict coverage of the proposed Final Judgment to wood flour toilet seats.

The United States originally sought to include longer time periods in the provisions which now terminate after five years. The United States also sought to enjoin the defendants from belonging to any trade association which engaged in activities forbidden by the proposed Final Judgment. These positions were abandoned as unnecessary in light of the relief obtained in the proposed Final Judgment. In addition, the Complaint in this case requested that, for ten years, each defendant be required to keep records of meetings between pricing personnel of itself and any other toilet seat manufacturer. The Complaint also requested that, for

five years, the defendants be required to certify by affidavit with every change in the price of wood flour toilet seats that such change was arrived at independently. These requirements are considered unnecessary in light of the combination of restraints and affirmative obligations contained in the proposed Final Judgment. Finally, the Complaint requested that each defendant be required to withdraw its current price list and issue a new price list arrived at without collusion with other manufacturers. Such a requirement is not in the proposed Final Judgment because the current price lists are not believed to be the result of the conspiracy charged in 1974.

VII

OTHER MATERIALS

There are no materials or documents which the Government considered determinative in formulating this proposed Final Judgment. Therefore, none are being filed along with this Competitive Impact Statement.

Dated: AUG 11 1977


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