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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON

10 UNITED STATES OF AMERICA,)

11 Plaintiff,)

12 v.)

No. C-82-809

13 PAN-ALASKA FISHERIES, INC.,)

COMPETITIVE IMPACT STATEMENT

14 SEA-ALASKA PRODUCTS, INC.,)

Filed: June 30, 1982

15 UNIVERSAL SEAFOODS, LTD.,)

16 WHITNEY-FIDALGO SEAFOODS, INC., and)

ALASKA MARKETING ASSOCIATION,)

17 Defendants.)

18 Pursuant to the Antitrust Procedures and Penalties Act, 15
19 U.S.C. § 16(b)-(h), the United States files this Competitive Im-
20 pact Statement relating to the proposed Final Judgment submitted
21 for entry in this civil antitrust proceeding.

22 I

23 NATURE AND PURPOSE OF THE PROCEEDING

24 The United States has filed a civil antitrust suit alleging
25 that four Alaska seafood processing companies and a fishermen's
26 cooperative conspired to fix the prices processors paid Bering
27 Sea fishermen for king and tanner crab. The defendant processors,
28 all of whom are Seattle-based firms with processing facilities
29 in the Dutch Harbor area of Alaska, are Pan-Alaska Fisheries,
30 Inc., Sea-Alaska Products, Inc., Universal Seafoods, Ltd., and
31 Whitney-Fidalgo Seafoods, Inc. The defendant fishermen's
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1 cooperative is the Alaska Marketing Association ("AMA"), whose
2 members are Bering Sea fishing boat operators who harvest crab
3 and sell it to Dutch Harbor processors. The primary function
4 of the AMA is to represent its members in bargaining with the
5 processors concerning the price to be paid for the crab.

6 The complaint alleges that the defendant processors jointly
7 negotiated with the AMA on the price to be paid Bering Sea fishermen
8 for deliveries of live king and tanner crab. The complaint further
9 alleges that the defendant processors met and communicated with
10 one another, outside the presence of the AMA, with regard to
11 the prices they would pay for live Bering Sea crab.

12 The complaint seeks a judgment by the Court that the
13 defendants engaged in an unlawful combination and conspiracy
14 in restraint of trade in violation of the Sherman Act. It
15 also seeks an order by the Court to enjoin the defendants from
16 any such activities or other activities having a similar pur-
17 pose or effect in the future. Specifically with respect to the
18 defendant processors, the complaint seeks to enjoin them from
19 agreeing among themselves or with other processors to fix the
20 price of live crab, and from communicating among themselves or
21 with other processors concerning the price they are paying or
22 intend to pay for live crab. Specifically with respect to the
23 AMA, the complaint seeks to enjoin the defendant association
24 from engaging in live crab price negotiations in which more
25 than one processor participates, and from participating in or
26 facilitating any agreement among processors to fix live crab
27 prices.

28 II

29 DESCRIPTION OF PRACTICES GIVING RISE TO THE ALLEGED VIOLATION

30 In recent years, the fishing grounds off the coast of Alaska
31 have been among the most commercially productive in the world,

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1 generating raw fish sales of more than \$240 million in 1980. One
2 of the most important seafood products commercially harvested in
3 Alaska waters is crab, of which two varieties, king and tanner
4 (or "snow") crab, account for the vast bulk of the catch. In
5 recent years, the Bering Sea crab fishery -- which lies west of
6 the southern portion of the Alaska Peninsula -- has been by far
7 the most productive of the several Alaska crab fishing areas.
8 The Bering Sea king crab fishery accounted for more than 80
9 percent of the 186 million pounds of Alaska king crab harvested
10 in 1980 and 64 percent of the 131 million pounds of tanner crab
11 harvested in the same year. In 1980, crab processors operating
12 in the Dutch Harbor area of Alaska paid more than \$100 million
13 to Bering Sea fishermen for raw crab.

14 Bering Sea crab fishermen deliver their catch alive to pro-
15 cessors for freezing or canning. The processors butcher the live
16 crab and then, normally, boil it in the shell before either re-
17 moving the meat for canning or freezing in blocks, or, more
18 typically, freezing the crab parts in the shell for sale in that
19 form. Crab processed in the Dutch Harbor area is generally either
20 shipped directly to Japan, a principal consumer of Bering Sea crab,
21 or transported to Seattle -- where many of the processing companies
22 own storage and freezer facilities -- for warehousing pending sale
23 in the United States and Europe.

24 The prices paid by processors to fishermen for live crab is
25 a subject of yearly negotiation. In 1971, a number of Bering
26 Sea fishermen formed the AMA, pursuant to the Fishermen's Collective
27 Marketing Act ("FCMA"), 15 U.S.C. § 521-22, in order to increase
28 their bargaining power in negotiating crab prices with processors
29 operating in the Dutch Harbor area. The FCMA provides an antitrust
30 exemption for joint bargaining by fishermen through associations

1 such as the AMA. It does not, however, permit joint bargaining
2 among processors, or permit fishermen's associations to participate
3 in joint bargaining among processors.

4 Around 1975, and continuing at least until 1980, a practice
5 developed whereby two or more of the major Dutch Harbor processors,
6 including the defendant processors (who annually account for about
7 40% of the live crab purchases in the Dutch Harbor area), jointly
8 met with AMA representatives to reach agreement on the price they
9 would pay for crab purchased from AMA members. Defendant processors
10 also occasionally met outside the presence of AMA representatives
11 to determine their negotiating stance and decide on the price
12 they would be willing to pay. The price ultimately agreed upon
13 by the defendant processors and AMA, whose members annually account
14 for about 50% of the crab harvested from the Bering Sea, was then
15 generally followed by the other Dutch Harbor area processors and
16 by non-AMA fishermen operating in the Bering Sea.

17 The complaint alleges that the combination and conspiracy
18 had the following effects, among others: (a) the price of live crab
19 was fixed and maintained at artificial and noncompetitive levels;
20 (b) sellers of live crab were denied the benefits of free and
21 open competition; and (c) competition in the purchase of live crab
22 was restrained.

23 III

24 EXPLANATION OF PROPOSED FINAL JUDGMENT

25 The United States and the defendants have stipulated that the
26 Court may enter the proposed Final Judgment after compliance with
27 the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h).
28 The proposed Final Judgment provides that the entry of the Final
29 Judgment does not constitute any evidence against or an admission
30 by any party with respect to any issue of fact or law. Under the

1 provisions of Section 2(e) of the Antitrust Procedures and Penalties
2 Act, the proposed Final Judgment may not be entered until the Court
3 determines that entry is in the public interest.

4 1. Prohibited Conduct

5 Section IV of the proposed Final Judgment prohibits each
6 defendant processor from entering into, adhering to, participating
7 in, maintaining, furthering, or enforcing, either directly or in-
8 directly, any agreement, understanding, arrangement, plan, pro-
9 gram, combination, or conspiracy with any processor to determine,
10 establish, fix, raise, lower, maintain, or adhere to prices or
11 other terms or conditions for the purchase or sale of live crab
12 to be processed in the Dutch Harbor area. Section IV also pro-
13 hibits the AMA from participating in any such agreement among
14 Dutch Harbor processors.

15 Section V prohibits the defendants from engaging in certain
16 communications and joint bargaining activities. Specifically,
17 each defendant processor is prohibited from, directly or in-
18 directly, communicating with any other processor operating in
19 the Dutch Harbor area regarding: current prices; future prices
20 or anticipated changes in the prices of live crab to be processed
21 in the Dutch Harbor area; prices discussed or to be discussed,
22 or offers or counteroffers made or to be made by any party in live
23 crab price negotiations; or strategy, timing, or conduct of such
24 negotiations. Defendant processors are also prohibited from com-
25 municating with any non-Dutch Harbor processor regarding future
26 prices, anticipated changes in prices, or current prices not yet
27 posted, published, or announced on the radio, for live crab to
28 be processed in the Dutch Harbor area. Although the conduct on
29 which the complaint is based did not involve communications or
30 agreements with processors outside the Dutch Harbor area, the

1 relief provided by this provision of the proposed Final Judgment
2 will ensure that the defendant processors do not in the future
3 engage in such conduct. Finally, each defendant processor is
4 prohibited from engaging in any form of joint or collective bar-
5 gaining regarding prices to be paid for live crab in the Dutch
6 Harbor area.

7 Section V prohibits the AMA from knowingly engaging in
8 live crab price negotiations in which two or more processors
9 participate jointly or collectively. The AMA is further prohibited
10 from requesting, encouraging, or knowingly facilitating or
11 assisting, in any way, the processors to engage in joint or
12 collective bargaining concerning prices to be paid for live
13 crab in the Dutch Harbor area.

14 2. Permissible Business Transactions

15 Section VI of the proposed Final Judgment makes clear that
16 the Judgment would not prohibit the defendants from engaging in
17 certain business transactions. First, each defendant processor
18 is specifically permitted to negotiate and agree, individually,
19 with any fishermen (defined as one or more fishermen or any co-
20 operative association of fishermen, including the AMA) on the
21 price paid for live crab. Second, each defendant processor may
22 post, publish, or publicly announce by radio to prospective sellers
23 of live crab the price it is currently willing to pay them for live
24 crab. Third, each defendant processor may request, during live crab
25 price negotiations, that a fisherman confirm orally or in writing
26 any live crab price offers which it asserts it has received from
27 any other Dutch Harbor processor. Each defendant processor is
28 further permitted to seek or give verification of such live crab
29 price offers from or to any other Dutch Harbor processor. However,
30 such verification may not occur before the opening of the Bering

1 Sea crab season, defined as the later of (i) the date set by the
2 State of Alaska for the official opening of the season or, (ii) with
3 respect to each defendant processor, the time at which such processor
4 has agreed with the AMA or any successor association on the price
5 it will pay for the first delivery of live crab for that season
6 or has announced its intention to pay a price previously agreed
7 to between such association and any other Dutch Harbor processor.
8 Moreover, verification of prices may be undertaken only by legal
9 counsel for such processors and must be limited to a confirmation
10 or denial of representations made by a seller of live crab as
11 to the price which it has allegedly been offered by the processor
12 from which verification is sought.

13 A fourth area of permissible business conduct, as specified
14 in Section VI of the proposed Judgment, is the participation
15 with other Dutch Harbor processors in joint government lobbying
16 efforts. Fifth, each defendant processor may discuss with other
17 Dutch Harbor processors common industry-wide or local issues,
18 provided such discussions do not relate to prices to be paid
19 for live crab. Sixth, each defendant processor may separately
20 negotiate or enter into any bona fide, arm's length contract,
21 agreement or understanding with another processor to sell or
22 furnish live crab to that processor. However, prior to the opening
23 of the Bering Sea crab season any price agreed upon between the
24 two processors must be specified in terms of one of the following
25 formulas, rather than a particular price: (i) the prevailing
26 market price or the defendant processor's posted price at the time
27 of delivery; (ii) a stated discount from such prevailing or posted
28 price; or (iii) a stated premium or commission to be added to such
29 prevailing or posted price. A further condition set upon such
30 transactions is that the negotiations and sales transactions not

1 be used to communicate or signal the price that either processor
2 intends to pay any third party for live crab.

3 Seventh, Section VI of the proposed Judgment would specifically
4 permit a processor defendant to own or operate jointly with another
5 Dutch Harbor processor a shore-based processing facility or fishing/
6 processing vessel, provided the defendant processor has at least
7 a 20% ownership or participating interest, or to contract with the
8 owner or operator of a processing or a fishing and processing vessel
9 to process live crab for such defendant processor. Section VI
10 would also allow a defendant processor and any other non-defendant
11 processor to engage in any communications, transactions, or
12 activities necessary for carrying out such arrangements.

13 Finally, Section VI makes clear that the prohibitions specified
14 in Sections IV and V of the proposed Judgment would not apply to
15 communications, transactions, or activities solely between Universal
16 Seafoods and its affiliate, Dutch Harbor Seafoods (or any of their
17 respective officers, directors, agents, or employees), unless the
18 majority of the stock or substantially all of the assets of either
19 company are transferred to persons not holding an ownership in-
20 terest in the respective companies as of the date of entry of the
21 Final Judgment.

22 The AMA is specifically permitted, under the terms of Section
23 VI, to negotiate and agree on the price, terms or conditions of
24 sale with any individual processor or other purchaser of live crab;
25 to engage in any conduct authorized by the Fishermen's Collective
26 Marketing Act; and to confirm orally or in writing to any defendant
27 processor during price negotiations with such processor and upon its
28 request, any price offers the AMA has received from any other Dutch
29 Harbor processor.

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1 3. Affirmative Obligations

2 Section VII of the Final Judgment imposes a number of af-
3 firmative obligations upon the defendants. With respect to the
4 processor defendants, they must furnish a copy of the Final Judgment
5 to (as well as obtain a written statement evidencing receipt by)
6 each of their current (or successor) officers, directors, employees
7 and agents who have managerial responsibility for or authority over
8 determining prices to be paid for live crab to be processed in the
9 Dutch Harbor area, or who engages in or has responsibility or au-
10 thority over live crab price negotiations. Within sixty days after
11 entry of the Final Judgment, each processor defendant must file
12 an affidavit as to the fact and manner of its compliance with
13 this obligation.

14 The AMA has similar obligations under Section VII, re-
15 quiring it to furnish a copy of the Final Judgment to (as well as
16 obtain a written statement evidencing receipt by) each of its mem-
17 bers, officers, and directors, and to any employees who engage in
18 or have responsibility or authority over negotiating prices for the
19 sale of live crab to Dutch Harbor processors. It is also required
20 to file an affidavit as to the fact and manner of its compliance.

21 Section VIII requires the defendants to initiate a compliance
22 program for their respective employees and/or members. They are
23 obliged to advise certain persons within their company or association
24 of the requirements of this Final Judgment, of the criminal and civil
25 penalties which may be imposed upon such person or defendant for
26 violation of the Final Judgment, of the possible disciplinary action
27 by the defendant such person may suffer for failure to comply with
28 the Final Judgment, and of the fact that defendant's legal advisors
29 are available to confer regarding compliance questions or problems.

30 Section VIII further requires each processor defendant, for
31 a period of ten years, to furnish the Department of Justice with

1 notice of any investment in any joint venture, joint buying ar-
2 rangement, or joint ownership of any entity engaged in the purchase
3 of live Bering Sea crab with any non-defendant Dutch Harbor pro-
4 cessor. The report must identify the name and interests of the
5 parties, a full description of the activities contemplated, the
6 names of individuals with authority to set live crab purchase prices,
7 and the manner in which the parties intend to allocate respon-
8 sibilities for determining the price they will pay for such crab.

9 Section IX requires each defendant processor, as a con-
10 dition of the sale of its Dutch Harbor assets, to obtain from the
11 acquiring party its agreement to be bound by the provisions of
12 this Final Judgment and to file such agreement with the Court.
13 In the course of negotiations over the terms of the Final Judgment,
14 the defendant processors urged that if any of them were placed
15 in a position of bankruptcy or insolvency, a sale of its assets
16 by a trustee or receiver would be significantly hampered by oper-
17 ation of Section IX. The Department agreed in this case, and
18 advised the defendant processors by letter (see Attachment 1)
19 that it will not seek to enforce this Final Judgment against an
20 unrelated party that purchases the assets in a bankruptcy or
21 insolvency proceeding, nor oppose a motion to release a defendant
22 processor from the requirements of Section IX regarding a sale
23 in such circumstances. The Department further advised, however,
24 that it would not release a defendant processor from the obligation
25 of the Judgment in the event the assets were sold to a related
26 person, another defendant processor, or to any person or persons
27 having a controlling interest in any defendant processor.

28 Section IX also requires the members of the AMA, as a con-
29 dition to joining any successor association, that such association
30 agrees to be bound by the Final Judgment and file such agreement
31 with the Court.

1 Finally, under Section X of the Final Judgment, the Justice
2 Department will have access, upon reasonable notice to each de-
3 fendant's records and personnel in order to determine each defen-
4 dant's compliance with the Judgment.

5 4. Scope of Proposed Judgment

6 The proposed Final Judgment will remain in effect for a
7 period of ten (10) years from the date of entry. It applies to
8 each defendant and to all other persons in active concert or
9 participation with any of them who shall have received actual
10 notice of the Final Judgment by personal service or otherwise.

11 5. Effect of the Proposed Judgment on Competition

12 The relief in the proposed Final Judgment is designed to
13 prevent any recurrence of the activities alleged in the complaint.
14 The prohibitive language of the Judgment is designed to ensure
15 that each defendant processor will act independently in deter-
16 mining prices, terms and conditions at which it will purchase live
17 raw crab, and that the defendant association will not participate
18 in or encourage price negotiations with more than one processor
19 at a time. The affirmative obligations are designed to ensure
20 that each defendant's employees are aware of their obligations
21 under the decree in order to avoid a repetition of behavior that
22 occurred.

23 The Department of Justice believes that the proposed Final
24 Judgment contains adequate provisions to prevent further violations
25 by the defendants of the type upon which the complaint is based.
26 The Department believes that disposition of the lawsuit without
27 further litigation is appropriate because the proposed Judgment
28 provides all the relief which the United States sought in its
29 complaint, and the additional expense of litigation would not
30 result in additional public benefit.

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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 attorneys' 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 Judgment has no prima facie effect in any subsequent lawsuits that may be brought against these defendants.

V

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Joel E. Leising, Attorney, Antitrust Division, United States Department of Justice, Washington, D.C. 20530, within the 60-day period provided by the Act. These comments, and the Department's responses, 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 entry. The Judgment provides that the Court retains jurisdiction over this action, and the parties 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 Department considers the substantive language of the Judgment to be of sufficient scope and effectiveness to make

1 litigation on relief unnecessary, as the Judgment provides all
2 relief which reasonably could have been expected after trial.


3 VII


4 DETERMINATIVE MATERIALS AND DOCUMENTS

5 No materials or documents were considered determinative by
6 the United States in formulating the proposed Final Judgment.
7 Therefore, none are being filed pursuant to the Antitrust Pro-
8 cedures and Penalties Act, 15 U.S.C. § 16(b).

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10 Respectfully submitted,

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13 JOEL E. LEISING

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16 KENNETH P. FREIBERG

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19 CAROLYN G. MARK

20
21 /s/ Eric L. Wilson
22 ERIC L. WILSON

23
24
25 Attorneys, Department of Justice
26 Antitrust Division
27 10th & Pennsylvania Ave., N.W.
28 Washington, D.C. 20530
29 Telephone: (202) 633-4428

30 Dated:

ATTACHMENT 1

CSS:JEL
60-11-110

[Sent to each defendant processor].

Re: United States v. Pan-Alaska Fisheries, Inc. et al.

Dear :

In connection with the above-captioned suit, and the proposed Final Judgment to be filed in the U.S. District Court for the Western District of Washington, you have expressed concern about Section IX of that Judgment whereby a defendant processor must require that any purchaser of all, or substantially all, of its Dutch Harbor processing assets agree, as a condition of sale, to be bound by the provisions of the Final Judgment. In particular, you have expressed concern that if your client were placed in a position of bankruptcy or insolvency, a sale of its assets by a trustee or receiver would be significantly hampered by operation of this Section of the Judgment.

The purpose of this letter is to advise you that in the circumstances of this case, the Department of Justice will not seek to enforce the Final Judgment entered in United States v. Pan-Alaska Fisheries, Inc., et al. with respect to a sale of assets to an unrelated person in a bankruptcy or an insolvency proceeding; nor will the Department oppose a motion to release a defendant processor from the requirements of Section IX of the Final Judgment with respect to a sale in such circumstances. It would not, however, be our intention to release a defendant processor from the obligations of Section IX in the event the assets were sold to a related person, defendant processor, or to any person or persons having a direct or indirect controlling interest in any defendant processor.

Sincerely yours,

Charles S. Stark, Chief
Foreign Commerce Section
Antitrust Division