UNITED STATES DISTRICT COURT

DISTRICT OF KANSAS

UNITED STATES OF AMERICA, Plaintiff, v. LAUHOFF GRAIN COMPANY, and KRAUSE MILLING COMPANY, Defendants.	)	Civil No. 78-1123

COMPETITIVE IMPACT STATEMENT

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 consent judgment submitted for entry in this civil antitrust proceeding.

I

NATURE OF THE PROCEEDING

On March 27, 1978, the United States filed a civil complaint under Section 4 of the Sherman Act [15 U.S.C. § 4], alleging that the defendants, Krause Milling Company (hereinafter "Krause") and Lauhoff Grain Company (hereinafter "Lauhoff"), had violated Section 1 of the Sherman Act [15 U.S.C. § 1]. The Complaint alleged that, beginning in early 1970 and continuing until late 1976, defendants and various co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce, the substantial terms of which were: (a) to allocate between the defendants contracts awarded by the Commodity Credit Corporation (hereinafter CCC), an agency of the United States Department of Agriculture, for the total volume of corn-soya-milk products, various types of blended foods purchased by the CCC under the Food For Peace Program; and (b) to submit rigged, collusive and non-competitive bids to the CCC for the above-described contracts.

On July 26, 1978 the United States filed a First Amended Complaint in which the above-described violation of Section 1 of the Sherman Act was realleged as Count One. In addition, Count Two alleged a violation of the False Claims Act [31 U.S.C. §§ 231-233] and Count Three alleged actual damages under Section 4A of the Clayton Act [15 U.S.C. § 15(a)]. Counts Two and Three of the First Amended Complaint, seeking money damages for alleged overcharges suffered by the United States as a result of the alleged conspiracy, have been previously settled and compromised by the United States with the defendants Lauhoff and Krause without adjudication of any issue of fact or law. The attached final judgment provides injunctive relief against defendants Krause and Lauhoff under Count One.

A federal grand jury indictment against the same corporate defendants and one individual defendant, Charles A. Krause, president of Krause Milling Company, was also filed in the District of Kansas on March 27, 1978. The indictment alleged a criminal felony violation of Section 1 of the Sherman Act arising out of the same conspiracy alleged in this case. All defendants in the criminal case entered pleas of nolo contendere and were sentenced by District Judge Earl E. O'Connor on November 13, 1978. The sentences were as follows:

Lauhoff Grain Company	$450,000 fine
Krause Milling Company	$450,000 fine
Charles A. Krause	2 years custody of the Attorney General, 6 months to be served with the remainder suspended; $25,000 fine.

Entry by the Court of the proposed consent judgment will terminate the remaining portions of this civil action against Krause and Lauhoff, except insofar as the Court will retain jurisdiction over the matter for possible further proceedings which may 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

The defendants are grain millers which manufacture corn-soya-milk products (CSM), high protein blended food products, which are sold to the CCC under the "Food For Peace Program" (Title II of the Agricultural Trade Development and Assistance Act of 1954, as amended). The CCC ships the product to foreign countries for distribution by relief organizations to undernourished people and to victims of war, famine and a variety of natural disasters. Defendants' total sales of CSM products during the period of the alleged conspiracy amounted to about $280 million.

The Government would have been prepared to prove at trial that representatives of defendants entered into an agreement in early 1970 to allocate the total purchases of CSM products monthly by the CCC between their two companies on the basis of 55 percent of the quantity to be purchased from Lauhoff and 45 percent to be purchased from Krause. This allocation was to be accomplished through a series of phone calls on the occasion of each bid during which the prices and quantities to be bid by each company would be discussed and agreed upon. Bids were then submitted to the CCC containing the prearranged prices and quantities which each company had agreed to submit. This alleged bid rigging and contract allocation agreement continued until November, 1976 when grand jury subpoenas duces tecum were served upon the defendants.

According to the Complaint, the alleged conspiracy had the following effects:

(a) Prices of CSM products sold to the CCC under the Food For Peace Program were fixed, maintained, and established at artificial and non-competitive levels;

(b) Competition in such sales was restrained, suppressed and eliminated; and

(c) The United States Goverment was denied the benefits of free and open competition in the purchase of CSM products.

Defendants, in their formal pleadings filed in the case, denied all of the allegations in the Government's Complaint and were prepared to dispute the evidence to be offered by the Government at a trial.

III

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and the defendants Krause and Lauhoff have stipulated that the proposed final judgment, which is 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 between the parties provides that there has been no admission by any 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 the proposed judgment by the Court is conditioned upon a determination by the Court that the judgment is in the public interest.

A. Prohibited Conduct

The proposed judgment will prohibit Krause and Lauhoff for ten years from entering into or adhering to any agreement with any person to fix or maintain the prices or other terms or conditions for the sale of blended foods to any third party. The judgment also prohibits the submission of non-competitive, collusive, or rigged bids on contracts for the sale of blended foods to any person. Also forbidden is any agreement by Krause or Lauhoff to allocate contracts, rotate or divide markets, customers, or territories with respect to sales of blended foods. The judgment also prohibits Krause and Lauhoff, by agreement or individually, from communicating or exchanging with any other person any information on prospective prices, quantities, freight rates, discounts or other terms and conditions for the sale of blended foods, before such prices or other terms are made available to the public or trade generally, except in the course of bona fide purchase and sales transactions.

B. Required Conduct

To ensure that all bids to the Government are made without collusion or agreement, the proposed judgment requires defendant Krause and Lauhoff to furnish the Government a copy of any audit of their bidding procedures for CCC sales prepared in accordance with any Order of the CCC entered as a result of debarment proceedings conducted by CCC against Krause and Lauhoff. To permit monitoring of compliance with the provisions relating to competitive bidding, defendants Krause and Lauhoff are also required, over a five-year period, to preserve all written price computations and other calculations actually performed in connection with the submission of bids to public agencies.

For the purpose of notifying all necessary employees regarding the prohibitions of the judgment, defendants Krause and Lauhoff are each required, within 60 days, to serve a copy of the judgment on each of their respective directors and officers, and upon each of their employees or agents who have any responsibility for preparing, reviewing, or submitting bids on blended foods. If new employees are hired in these positions in the future, Krause and Lauhoff must also serve a copy of the judgment on these new employees. The judgment applies not only to the defendant corporations but also to their officers, directors, employees, and agents who have actual notice of the judgment. Requiring the defendants Krause and Lauhoff to give such notice to their responsible personnel serves two purposes: it enables the affected employees to know what activities are prohibited, and it permits prosecution for criminal contempt of those employees who disregard the provisions of the judgment. Krause and Lauhoff are also required to establish a reasonable program for those persons having duties in regard to establishment of prices, discounts, or other terms or conditions of sale of blended foods advising them of the company's obligations under the judgment.

Under the proposed judgment, the Department of Justice is given access for ten years to the files and records of the defendants Krause and Lauhoff in order to examine such records for compliance or noncompliance with the judgment. The Department is also granted access to interview employees of the defendants Krause and Lauhoff to determine whether defendants are complying with the judgment.

C. Effect of the Proposed Judgment on Competition

The relief encompassed in the proposed consent judgment is designed to prevent a recurrence of any of the activities alleged in the Complaint. The prohibitory language of the judgment will ensure that all pricing decisions on blended foods are made independently by the individual competitors. The judgment contains sufficient record-keeping requirements and access to defendants' records to allow the Department to adequately monitor defendants' activities in the future.

In addition, Krause will be dismissed as a defendant in another related civil case. A second civil complaint virtually identical in form to the complaint in the captioned case, was filed July 26, 1978, and seeks damages and injunctive relief in three counts against Krause Milling Company and ADM Milling Co., with respect to a different product, soy-fortified sorghum grits (SFSG). That case was entitled United States v. Krause Milling Company and ADM Milling Co., 78 C 1122 (D. Kansas). Counts Two and Three, the damage counts, in that case have been previously settled with both ADM and Krause. A stipulated final judgment was entered on September 20, 1979 providing injunctive relief under Count One against ADM nearly identical to the relief which will be provided against Krause and Lauhoff in the attached decree.

The Department of Justice and Krause have stipulated to a dismissal of Count One seeking injunctive relief in the Krause-ADM case, which dismissal shall be effective upon entry of the final judgment in the captioned CSM case. An additional decree against Krause in the Krause-ADM case would thus be identical to the decree against Krause in the captioned case, and would be repetitious and unnecessary. The single proposed decree against Krause prohibits all of the illegal acts alleged in the complaints in both cases.

Accordingly, it is the opinion of the Department of Justice that the proposed judgment is fully adequate to prevent any future antitrust violations by the defendants Krause and Lauhoff. It is also the view of the Department that disposition of the case without additional litigation is appropriate in view of the fact that the proposed judgment includes the form and scope of relief equal to that which might be obtained after a full hearing on the issues in both civil cases at a trial.

IV

REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act [15 USC § 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. Since the CCC, an agency of the United States Department of Agriculture, was the only purchaser of blended foods, there are no potential private plaintiffs who have suffered any equitable or monetary damage as a result of the alleged violation in this case. Hence, no potential private litigants exist who have standing to sue under Section 4 of the Clayton Act in this matter.

V

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed judgment should be modified may submit written comments to John L. Burley, Department of Justice, Antitrust Division, Room 2634, 219 South Dearborn Street, Chicago, Illinois 60604, within the 60-day period provided by the Act. The comments and the government's 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 judgment at any time prior to its entry if it should determine that some modification of the judgment is necessary in the public interest. The proposed judgment itself provides that the Court will retain jurisdiction over this action, and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification or enforcement of the judgment.

VI

ALTERNATIVES TO THE PROPOSED CONSENT JUDGMENT

This case does not involve any unusual or novel issues of fact or law which might make litigation a more desirable alternative than the entry of the negotiated consent judgment. The proposed judgment contains virtually all the relief which was requested in the Complaint.

VII

OTHER MATERIALS

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act [15 USC § 16(b)] were considered in formulating this proposed judgment.

JOHN L. BURLEY
Attorney
Department of Justice

ALLYN A. BROOKS

JAMES J. KUBIK

DIANE C. LOTKO-BAKER

MARK S. PROSPERI

Attorneys, Department of Justice

Room 2634 Everett M. Dirksen Bldg.
Chicago, Illinois 60604
312-353-7283