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10 UNITED STATES DISTRICT COURT
11 FOR THE DISTRICT OF ALASKA

12 UNITED STATES OF AMERICA,)
13)
14 Plaintiff,) Civil No. A78-14
15)
16 v.)
17)
18 ARDEN-MAYFAIR, INC.;) COMPETITIVE IMPACT
19 MATANUSKA MAID, INC.; and) STATEMENT
20 MEADOWMOOR ALASKA DAIRY, INC.,)
21)
22 Defendants.)
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32)
Filed: December 13, 1979

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 January 25, 1978, the United States filed a civil complaint under Section 4 of the Sherman Act [15 U.S.C. §4] alleging that defendants Arden-Mayfair, Inc., Matanuska Maid, Inc., and Meadowmoor Alaska Dairy, Inc. violated Section 1 of the Sherman Act [15 U.S.C. §1]. The complaint alleged that defendants engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce the substantial terms of which were: (a) to fix, raise, stabilize and maintain the wholesale prices of dairy

1 products in south central Alaska; and (b) to submit collusive
2 and rigged bids for the sale of dairy products under contract
3 in south central Alaska.

4 In a federal grand jury indictment, also filed on
5 January 25, 1978, the same corporate defendants were charged
6 with a criminal violation of the Sherman Act, arising out of
7 the same alleged conspiracy. All defendants in the criminal
8 case were permitted to enter pleas of nolo contendere. In
9 September 1978, U.S. District Court Judge James A. von der
10 Heydt sentenced Arden-Mayfair, Inc. to pay a fine of \$50,000;
11 Matanuska Maid, Inc. was fined \$45,000; and Meadowmoor Alaska
12 Dairy, Inc. was fined \$25,000.

13 Entry by the Court of the proposed consent judgment will
14 terminate the remaining portions of this civil action, except
15 insofar as the Court will retain jurisdiction over the matter
16 for possible further proceedings which may be required to
17 interpret, modify or enforce the judgment, or to punish
18 alleged violations of any of the provisions of the judgment.

19 II

20 DESCRIPTION OF PRACTICES INVOLVED 21 IN THE ALLEGED VIOLATION

22 Defendants are producers and/or distributors of dairy
23 products such as milk, ice cream and similar products which
24 they sell as wholesalers to retail grocery stores, restaurants,
25 hospitals, schools, and other institutions run by federal,
26 state and local governmental agencies. Their total sales
27 of dairy products in 1975 were approximately \$18 million,
28 which accounted for approximately 95 percent of the total
29 wholesale sales of dairy products in south central Alaska.

30 The government would have been prepared to prove at
31 trial that the defendant dairies, through their top manage-
32 ment level employees, had frequent communications and

1 meetings among themselves about various aspects of the dairy
2 business. Evidence would have been offered that, at various
3 times during the alleged conspiracy, defendants' employees
4 met, discussed, and agreed on raising wholesale prices to
5 their customers. The government was also prepared to prove
6 that on several occasions, representatives of the defendant
7 corporations met, discussed and reached an understanding as
8 to who would be the successful bidder on contracts being
9 offered by public agencies (federal, state and local) and
10 that there existed an agreement among the defendants to
11 divide the public agency business among themselves pursuant
12 to discussions among their representatives.

13 According to the complaint, the alleged conspiracy had
14 the following effects: (a) competition between and among
15 the defendants and co-conspirators in south central Alaska
16 had been restrained; (b) purchasers of dairy products in
17 south central Alaska had been deprived of free and open
18 competition in the sale of dairy products; and (c) wholesale
19 prices of dairy products in south central Alaska had been
20 raised, fixed and maintained at artificial and noncompetitive
21 levels.

22 Defendants, in their formal pleadings filed in the case,
23 denied all the allegations in the government's complaint and
24 were prepared to dispute the evidence to be offered by the
25 government at a trial.

26 III

27 EXPLANATION OF THE PROPOSED CONSENT JUDGMENT

28 The United States and the defendants have stipulated
29 that the proposed consent judgment, which is in a form
30 negotiated by the parties, may be entered by the Court at
31 any time after compliance with the Antitrust Procedures and
32 Penalties Act. The stipulation between the parties provides

1 that there has been no admission by any party with respect
2 to any issue of fact or law. Under the provisions of
3 Section 2(c) of the Antitrust Procedures and Penalties Act,
4 entry of the proposed judgment by the Court is conditioned
5 upon a determination by the Court that the judgment is in
6 the public interest.

7 A. Prohibited Conduct

8 The proposed judgment will for ten years prohibit the
9 defendants from entering into or adhering to any agreements
10 or arrangements with any person to raise, fix or maintain
11 the prices or other terms or conditions for the sale of dairy
12 products to any third party. The judgment also prohibits the
13 submission of any noncompetitive, collusive or rigged bid for
14 the sale of dairy products to any agency or institution of the
15 federal government or the State of Alaska or any other person.
16 Also forbidden is any agreement or understanding among
17 defendants to allocate, rotate or divide markets, customers
18 or territories. The judgment also prohibits defendants, by
19 agreement or individually, from communicating or exchanging
20 among themselves any information on prospective prices,
21 discounts or other terms and conditions for the sale of dairy
22 products. Defendants are further enjoined from communicating
23 or exchanging among themselves the prices or other terms of
24 any bid to a public agency.

25 B. Required Conduct

26 To ensure that all bids to public agencies are made
27 without collusion or agreement, the proposed judgment
28 requires each defendant, for a period of five years, to
29 submit with each sealed bid to a federal agency in Alaska
30 a certificate stating that each such bid was not in any way
31 the result of an agreement, understanding or communication
32

1 with any other producer, seller or distributor of dairy
2 products. False declarations made pursuant to this provision
3 of the judgment would subject the certifying officer to
4 criminal penalties under 18 U.S.C. §1001. To permit
5 monitoring of compliance with the provisions relating to
6 competitive bidding, defendants are also required over a
7 five-year period to preserve all written price computations
8 and other calculations actually performed in connection with
9 the submission of bids to public agencies, and to retain
10 such computations for a period of five years after the date
11 bids are submitted.

12 For the purpose of broadcasting to all responsible
13 employees the prohibitions of the judgment, defendants are
14 required, within 60 days, to serve a copy of the judgment on
15 each of their directors and officers, and upon each of their
16 employees or agents who have any responsibility for
17 establishing prices, discounts or other terms and conditions
18 of sale. If new employees are hired in these positions in
19 the future, defendants must also serve a copy of the judgment
20 on these new employees. The judgment applies not only to
21 the defendant corporations but also to their officers,
22 directors, employees and agents who have actual notice of the
23 judgment. Accordingly, requiring the defendants to give
24 such notice to their responsible personnel serves two purposes
25 it enables the affected employees to know what activities
26 they are prohibited from engaging in, and it permits
27 prosecution for criminal contempt of those employees who
28 disregard the provisions of the judgment.

29 The judgment further requires each defendant to
30 maintain, for a period of five years, a program to insure
31 compliance with the judgment. At a minimum, each program
32 must include: (1) the annual distribution of the judgment

1 to the officers and other company employees described above;
2 (2) the annual submission to these officers and employees
3 of a directive setting forth the defendant's policy for
4 compliance with the Sherman Act and this judgment, with a
5 warning that non-compliance will result in disciplinary action
6 and advice that defendant's legal advisors are available to
7 answer any questions concerning compliance; (3) the annual
8 submission by these officers and employees of a certificate
9 acknowledging that he has received and understands the
10 judgment and the directive; (4) annual meetings for these
11 officers and employees to review the terms of the judgment
12 and the obligations it imposes; and (5) requirements that
13 the date, time, place, participants, and topics of any
14 communication concerning price which is prohibited by the
15 judgment must be reported (subject to any legally recognized
16 privilege) within ten days of its occurrence, or, if there
17 are no such communications, annual certificates must be filed
18 indicating that fact, and that such reports or certificates
19 must be maintained for ten years. Each year for a period of
20 five years, a responsible official of each defendant is also
21 required to file with the plaintiff and under seal with the
22 Court, a sworn statement setting forth all the steps it has
23 taken during the preceding year to discharge these
24 obligations, along with copies of all directives issued by
25 the company in compliance with this judgment. Such officials
26 may also be required to give sworn testimony before the
27 Court relating to defendants' manner of compliance.

28 If any defendant sells all or substantially all of its
29 assets of its dairy business in Alaska, the judgment compels
30 the defendant to require the acquiring party to be bound
31 by the provisions of the judgment and to file with the

32 / / /

1 Court and the plaintiff its written consent to be bound by
2 the judgment.

3 The Department of Justice is given access under the
4 proposed judgment to the files and records of the defendant
5 corporations, to examine such records for compliance or
6 non-compliance with the judgment.

7 C. Effect of the Proposed Judgment on Competition

8 The relief encompassed in the proposed consent judgment
9 is designed to prevent a recurrence of any of the activities
10 alleged in the complaint. The prohibitory language of the
11 judgment will ensure that all pricing decisions in this
12 industry shall be made independently by the individual
13 competitors. The judgment contains sufficient record-keeping
14 requirements and access to defendants' records to allow the
15 Department to adequately monitor defendants' activities in
16 the future.

17 Accordingly, it is the opinion of the Department of
18 Justice that the proposed judgment is fully adequate to
19 prevent any future antitrust violations by the defendant
20 corporations. It is also the view of the Department that
21 disposition of the case without additional litigation is
22 appropriate in view of the fact that the proposed judgment
23 includes the form and scope of relief equal to that which
24 might be obtained after a full airing of the issues at a
25 trial.

26 IV

27 REMEDIES AVAILABLE TO POTENTIAL
28 PRIVATE LITIGANTS

29 Section 4 of the Clayton Act [15 U.S.C. §15] provides
30 that any person who has been injured as a result of conduct
31 prohibited by the antitrust laws may bring suit in federal
32 court to recover three times the damage such person has

1 suffered, as well as costs and reasonable attorney fees.
2 Prior to the filing of the complaint in this action Stayfresh
3 of Alaska, a former competitor of the defendants, brought
4 suit against Matanuska Maid and Arden (the action is captioned
5 Leon Barnes et al. v. Arden-Mayfair, Inc. et al., Civ. No.
6 C74-7565 (W.D. Wash.)). The case is presently in the
7 discovery stage. The State of Alaska has made an
8 Investigatory Demand on defendants pursuant to A.S. 4552 §200.

9 Stayfresh, the State of Alaska, and any other potential
10 plaintiffs will retain the same rights to seek monetary
11 damages and equitable remedies that they would have had if
12 the proposed judgment had not been entered. However, pursuant
13 to Section 5(a) of the Clayton Act, amended 15 U.S.C. §16(a),
14 the judgment may not be used as prima facie evidence in
15 private litigation.

16 - V

17 PROCEDURES AVAILABLE FOR MODIFICATION
18 OF THE PROPOSED JUDGMENT

19 As provided by the Antitrust Procedures and Penalties
20 Act, any person believing that the proposed judgment should
21 be modified may submit written comments to Anthony E. Desmond,
22 Department of Justice, Antitrust Division, 450 Golden Gate
23 Avenue, San Francisco, California 94102, within the 60-day
24 period provided by the Act. The comments and the government's
25 responses to them will be filed with the Court and published
26 in the Federal Register. All comments will be given due
27 consideration by the Department of Justice, which remains
28 free to withdraw its consent to the proposed judgment at
29 any time prior to its entry if it should determine that some
30 modification of the judgment is necessary to the public
31 interest. The proposed judgment itself provides that the
32 Court will retain jurisdiction over this action, and that

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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 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 U.S.C. §16(b)] were considered in formulating this proposed judgment.

Dated: December 13, 1979

/s/ Richard B. Cohen
RICHARD B. COHEN

/s/ James V. Dick
JAMES V. DICK

Attorneys, U.S. Department
of Justice