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11 Attorneys for the Plaintiff

12 UNITED STATES DISTRICT COURT
13
14 CENTRAL DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,
16
17 Plaintiff,

18 v.

19 ACME MEAT COMPANY;
20 BRISTOL FOODS, INCORPORATED, d/b/a
21 GOLD PAK MEAT COMPANY;
22 DELTA MEAT PACKING COMPANY;
23 FEDERAL MEAT COMPANY;
24 GEM PACKING COMPANY;
25 GLOBE PACKING COMPANY;
26 GREAT WESTERN PACKING COMPANY;
27 MEAT PACKERS, INCORPORATED;
28 O.K. MEAT PACKING COMPANY;
QUALITY MEAT PACKING COMPANY;
SERV-U MEAT PACKING COMPANY;
SHAMROCK MEATS, INCORPORATED;
UNION PACKING COMPANY; and
WARD FOODS, INCORPORATED,

Defendants.

Civil No. 78-1436-RMT (TX)

Competitive Impact Statement

Filed: October 22, 1979

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), the United States of America hereby files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

NATURE AND PURPOSE OF THE PROCEEDING

On August 13, 1978, the United States filed the complaint in this case, under Sections 1 and 4 of the Sherman Act, 15 U.S.C. §§ 1 and 4. The complaint alleges that from at least 1965 to at least 1974, the defendants and other conspirators engaged in a combination and conspiracy to fix, raise and stabilize the selling price of carcass beef in the metropolitan Los Angeles market area, in violation of Section 1 of the Sherman Act.

The complaint requested the Court to find that the defendants engaged in the unlawful conspiracy alleged and to enjoin its continuation and the exchange of carcass beef price information among the defendant meat packers.

The corporate defendants in this civil action as well as several of their officers were also indicted on April 3, 1978 for the same activity which is the basis for the complaint in this case. All of the corporate and eight individual defendants plead nolo contendere to a criminal violation of Section 1 of the Sherman Act before the Honorable United States District Judge Malcom Lucas. Ruben Krasn, Senior Executive of Globe Packing Company, proceeded to jury trial on the indictment and was convicted.

Entry of the proposed Final Judgment will terminate this civil action as to all defendants. The Court will retain jurisdiction over the matter for any further proceedings which might be required to interpret, modify, or enforce the Judgment, or to punish violations of any of the provisions of the Judgment.

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II

DESCRIPTION OF PRACTICES INVOLVED IN THE VIOLATION

The defendants are corporations engaged in the meat packing business in Southern California. They purchase cattle from feed lots located in five western states, then slaughter and dress the cattle into several products. The carcass beef sold by the defendants is beef which had been dressed but not processed further into sub-cuts, such as primal cuts, sub-primal cuts, and finished meat products.

The defendant meat packers' primary carcass beef customers are chain and independent retail grocery stores, food wholesalers, and government installations. In 1976, the defendants had total sales of \$827 million, including approximately \$277 million in sales of carcass beef.

The price fixing activities alleged in the complaint included weekly meetings between officers of the defendant meat packers at which a uniform sale price of carcass beef for the forthcoming week was discussed and agreed upon. The meetings were held on Wednesday mornings at the meat packers' trade association office. There the defendants' representatives discussed and arrived at prices which they would bid that afternoon to Safeway stores for Safeway's weekly purchases of carcass beef. The fixed price quoted to Safeway would often become the price also quoted by the defendants to other grocery chains and purchasers of carcass beef. In addition to the Wednesday meetings, the defendant packers occasionally fixed prices in telephone conversations with each other.

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The complaint alleges that this conspiracy had the following effects: (a) price competition in the sale of carcass beef in the Los Angeles area has been restrained; (b) the defendants' customers have been deprived of the opportunity to purchase carcass beef in an open and competitive market; (c) prices for carcass beef sold to customers of the defendants in the Los Angeles area have been artificially increased and stabilized, and; (d) interstate commerce and trade in the purchase and sale of beef has been adversely restrained.

III

PROCEDURAL HISTORY OF CASE

The civil complaint in this case was filed on August 13, 1978. Negotiations towards a consent decree were commenced subsequent to the termination of litigation in the criminal case, in September of 1978. Meat Packers, Inc., the defendant trade association, has been officially dissolved and it is expected that it will be dismissed as a defendant, without prejudice.

IV

EXPLANATION OF THE PROPOSED

CONSENT JUDGMENT

The United States and the defendants have agreed that a Final Judgment in the form negotiated by the parties may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act, provided that the Plaintiff has not withdrawn its consent. The stipulation 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 Judgment is conditional

1 upon a determination by the Court that it is in the public interest.

2 A. PROHIBITED CONDUCT

3 The proposed Judgment prohibits the defendants from entering
4 into, or claiming rights under, any agreement to fix, determine,
5 maintain, or stabilize prices or other terms or conditions of sale
6 of carcass beef to any third person in violation of the Sherman
7 Act. The defendants are further prohibited from communicating
8 with another meat packing company concerning the prices or terms
9 and conditions of sale of carcass beef which any meat packing
10 company is charging that day, including unaccepted bids or offers
11 as of that date, or may charge in the future to any past, present,
12 or prospective purchaser in the Los Angeles Metropolitan area.
13 Bona fide purchases and sales of carcass beef between a defendant
14 and another meat packing company would be excluded from this
15 restriction.

16 B. SCOPE OF THE PROPOSED JUDGMENT

17 The Final Judgment applies not only to the defendant companies
18 but also to their directors, officers, agents, and those employees
19 who have pricing responsibility for the sale of carcass beef, as
20 well as to any successors or assigns of the defendant. It also
21 applies to anyone participating with the defendant in conduct
22 prohibited by the Judgment who receives actual notice of the
23 Judgment.

24 The duration of the Judgment is 10 years. It is applicable
25 to sales of carcass beef anywhere within the Southern California
26 counties of San Bernadino, Riverside, Los Angeles, Ventura and
27 Santa Barbara. In addition, the defendant is obligated for a
28 period of ten years to maintain a program to insure compliance

1 with the Judgment. The defendants must distribute to their
2 directors, officers and those employees involved in the pricing
3 of carcass beef, a copy of the Judgment and these persons
4 must acknowledge in writing the receipt of the Judgment.
5 The defendants are also required to submit an annual statement
6 to these persons that corporate policy absolutely prohibits any
7 violation of the antitrust laws or of the Judgment and that the
8 knowing disregard of this policy will result in termination of
9 employment.

10 C. EFFECT OF THE PROPOSED

11 JUDGMENT ON COMPETITION

12 The terms of the Judgment are designed to insure that the
13 corporate defendant will act completely independently in
14 determining the prices, terms and conditions at which it sells or
15 offers to sell beef carcasses.

16 The Department of Justice believes that the proposed Final
17 Judgment adequately provides for the prevention of a continuance
18 or reoccurrence of the violations of the antitrust laws charged in
19 the complaint. The Government, upon reasonable notice, is also
20 given access to the records and employees of the defendant to
21 monitor its compliance with the provisions of the Judgment.
22 In the Department of Justice's view, disposition of the lawsuit
23 without further litigation is appropriate in that the proposed
24 Judgment adequately provides the relief which the Government
25 sought in its complaint.

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ALTERNATIVES TO THE
PROPOSED CONSENT JUDGMENT

During the course of negotiating the proposed Judgment, the Department initially sought to obtain an additional injunctive provision prohibiting the defendants from agreeing to, or acting to, directly or indirectly communicate about past, as well as present or future, prices for carcass beef. Such a prohibition would have precluded meat packers from access to information about past closed transactions and would have expanded the scope of Paragraphs IV(B) and V(A). The defendants, however, argued that such information may be necessary for the meat packers adequately to gauge their future financial conduct vis-a-vis sales of beef products and their purchase price of cattle. Also, precluding access to such information may impede the ability of the defendant firms to buy and sell beef in a pro-competitive manner by denying them knowledge of the state of the market for beef. After some consideration, the Department concluded that permitting limited communications about past transaction prices in this market should not facilitate price fixing, and that such relief as to past price information was not an indispensable element of settlement in this particular case. In any event, the Judgment prohibits any communications undertaken for the purpose of stabilizing prices. Thus, the proposed Judgment adequately provides the relief that the Government sought in its complaint without unduly interfering with the competitive operation of the carcass beef market.

Another alternative to the proposed Judgment is litigation of the case. In view of the fact that the proposed Judgment adequately

1 provides the relief which the Government sought in its complaint,
2 the Department of Justice therefore believes that such litigation
3 is unnecessary against the defendants.

4 VI

5 REMEDIES AVAILABLE TO

6 PRIVATE LITIGANTS

7 Section 4 of the Clayton Act (15 U.S.C. § 15), provides that
8 any person who has been injured as a result of conduct prohibited
9 by the antitrust laws may bring suit to recover three times the
10 damages suffered, as well as costs and reasonable attorney fees.
11 Entry of the proposed Final Judgment in this proceeding will
12 neither impair nor assist the bringing of any such private antitrust
13 actions, nor will it have any effect on pending actions. Under
14 the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)),
15 this Final Judgment has no prima facie effect in any lawsuits
16 which might be brought against these defendants.

17 VII

18 PROCEDURES AVAILABLE FOR

19 MODIFICATION OF THE

20 PROPOSED JUDGMENT

21 As provided by the Antitrust Procedures and Penalties Act,
22 any person believing that the proposed Judgment should be modified
23 may submit written comments to Crossan R. Andersen, Antitrust
24 Division, United States Department of Justice, 300 North Los Angeles
25 Street, Room 3101, Los Angeles, California, 90012, within the
26 sixty day period provided by the Act. These comments and the
27 Department's responses to them will be filed with the Court and
28 published in the Federal Register. All comments will be given

1 due consideration by the Department of Justice, which remains free
2 to withdraw its consent to the proposed Judgment at any time prior
3 to its entry if it should determine that some modification of
4 it is necessary.

5 VIII

6 OTHER MATERIALS

7 No other materials and documents of the type described in
8 Section 2(b) of the Antitrust Procedures and Penalties Act
9 (15 U.S.C. § 16(b)) were considered in formulating this proposed
10 Judgment.

11 Respectfully submitted,

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13 /s/ Julian S. Greenspun

14 Julian S. Greenspun, Attorney
U. S. Department of Justice

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Date: October 22, 1979