

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

Plaintiff, :

v. : Civil Action No.

78 Civ. 595

FABRICATORS SUPPLY CO., INC.; :

MECHANICS BUILDING MATERIALS

CO., INC.; :

NATIONAL PLYWOOD CO., INC.; and

STURTEVANT MILLWORK CORP., :

Defendants. :

COMPETITIVE IMPACT STATEMENT

filed: 20 APR 1979

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

I

NATURE OF THE PROCEEDINGS

The United States, on March 30, 1978, filed a civil antitrust action under Section 4 of the Sherman Act (15 U.S.C. § 4) alleging that the above-named defendants and unnamed co-conspirators from at least as early as 1968 had combined and conspired in violation of Section 1 of the Sherman Act (15 U.S.C. § 1) to raise, fix, and stabilize the wholesale prices at which Formica brand plastic laminates and Formica brand adhesives were sold in the Metropolitan New York Area.

Entry by the Court of the proposed Consent Judgment will terminate the action, except that the Court will retain jurisdiction over the matter for possible further proceedings, within the ten years next ensuing, which may be needed to interpret, modify or enforce the judgment or to punish violations of any of the provisions of the judgment.

II

DESCRIPTION OF THE PRACTICES INVOLVED IN THE ALLEGED VIOLATIONS

The defendants are wholesale distributors of Formica brand plastic laminates and Formica brand adhesives in the Metropolitan New York Area.

During the years 1974 through 1976, the defendants had combined sales of Formica brand plastic laminates and Formica brand adhesives in the New York Metropolitan Area of over \$15 million. The plastic laminates and adhesives are made by or for the Formica Corporation in states other than New York, New Jersey and Connecticut. They are shipped regularly and continuously in interstate commerce from the states of manufacture into the states of New York and New Jersey to the defendants for resale.

For the purpose of forming and effectuating the combination and conspiracy, the defendants and co-conspirators communicated to one another at meetings, in telephone conversations and on other occasions, their intention to raise the wholesale prices at which Formica brand plastic laminates and Formica brand adhesives were sold in the Metropolitan New York Area and jointly established in some cases the specific selling price and in others the specific amount by which such prices were to be increased. The evidence to be produced at trial would show that as a result of the conspiracy, the wholesale prices of Formica brand plastic laminates and Formica brand adhesives in the Metropolitan New York Area have been fixed, raised, and maintained at artificial and non-competitive levels; purchasers of Formica brand plastic laminates and Formica brand adhesives in the Metropolitan New York Area have been deprived of free and open competition; and competition in the sale of Formica brand plastic laminates and Formica brand adhesives has been restrained.

III

EXPLANATION OF THE PROPOSED CONSENT JUDGMENT

The United States and the defendants have stipulated that the proposed Consent Judgment, in the form negotiated by and among the parties, may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The stipulation among 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 is conditioned upon a determination by the Court that the proposed Judgment is in the public interest.

A. Prohibited Conduct

The proposed Judgment will prohibit each of the defendants from adhering to, maintaining, furthering, enforcing or entering into, directly or indirectly, any agreement, understanding, plan, or program with any other wholesale distributor to raise, fix, stabilize, or maintain the prices at which plastic laminates or adhesives are offered for sale or from adopting or following any practice, plan, program, or device having a similar purpose or effect. The defendants will be enjoined from acting either unilaterally or in concert with any other person, directly or indirectly, to induce, coerce, or attempt to influence any other wholesale distributor to adhere to any suggested list price in the sale of plastic laminates or adhesives. The defendants will also be enjoined from communicating, directly or indirectly, to any wholesale distributor information concerning the actual or proposed changes in the wholesale price for plastic laminates or adhesives and the actual or proposed dates for any changes in the wholesale price for plastic laminates or adhesives.

The defendants will be permitted, however, to communicate such information as is necessary to their own subsidiaries,

affiliates, or parent. Further, they may unilaterally disseminate to their customers (except another wholesale distributor) their own existing prices or announced prices or other information pertaining to their prices. Each defendant is required by the Consent Judgment to establish a program for dissemination of information as to the Judgment and compliance with the Judgment involving each corporate officer, director, employee, and agent having responsibilities in connection with or authority over the establishment of the wholesale prices at which plastic laminates or adhesives are sold, advising them of its and their obligations under the Final Judgment. Each defendant is required to furnish to plaintiff within one hundred and twenty (120) days of the entry of the Final Judgment, and thereafter upon request by plaintiff, on or about the anniversary date of the Final Judgment for a period of five (5) consecutive years from the date of its entry, an account of all steps such defendant has taken the preceding year to discharge obligations to comply with the Judgment and to include with the account copies of all written directives issued during the prior year with respect to compliance with the terms of the Final Judgment.

B. Scope of the Proposed Judgment

The proposed Judgment applies to each defendant, its officers, directors, agents, employees, subsidiaries, successors, and assigns, and to those persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

The defendants are bound by the prohibitions and obligations of the proposed Judgment for a period of ten (10) years from the date of its entry and thereafter the Judgment shall terminate and cease to be effective.

The Judgment applies to each defendant's activities wherever they may occur.

C. Effect of the Proposed Judgment on Competition

The relief encompassed in the proposed Consent Judgment is designed to prevent any recurrence of the conduct alleged in the Complaint. The prohibitive language of the Judgment should ensure that no future agreements or combinations between or among the defendants to fix, raise, maintain, or stabilize the wholesale price of plastic laminates or adhesives will be arranged.

The Judgment provides methods for determining defendants' compliance with the terms of the Judgment. The Department of Justice, through duly authorized representatives, may interview officers, employees, and agents of each defendant regarding its compliance with the Judgment. Representatives of the Department are also given access, upon reasonable notice, to examine each defendant's records for possible violations of the Judgment and to request defendants to submit reports to the Department of Justice on matters contained in the Judgment.

It is the opinion of the Department of Justice that the proposed Consent Judgment provides fully adequate provisions to prevent continuance or recurrence of violations of the antitrust laws charged in the Complaint. In the Department's view, disposition of the lawsuit without further litigation is appropriate in that the proposed Judgment provides all the relief which the Department sought in its Complaint, and the additional cost of litigation necessarily involved if the issues were litigated would not result in any additional relief. Accordingly, the public interest is best benefited by the proposed consensual disposition of the action.

IV

ALTERNATIVE REMEDIES CONSIDERED BY THE ANTITRUST DIVISION

The defendants initially proposed a Consent Judgment which the Antitrust Division concluded would not ensure that

the conspiracy charged in the Complaint would not continue or recur. The Division responded to the defendants proposed Judgment with a counter-proposal from which the Final Consent Judgment was negotiated.

The primary point of difference that was ultimately compromised between the parties related to an injunctive provision which would prohibit the defendants from issuing price lists to their dealers. The defendants drafted a proviso to Section IV(C) which authorized the unilateral dissemination by a defendant to its customers (other than another wholesale distributor) of a defendant's own existing prices, or announced prices, or other bona fide information pertaining to its prices, including prices or other price information not yet effective. This enabled the defendants to publish price lists to the trade while still prohibiting the furnishing of such lists to another wholesale distributor. The Antitrust Division was agreeable to such a modification since the conduct contemplated is lawful and does not increase the risk of recurrence of the acts alleged in the Complaint. Additionally, a proviso was inserted in Section III which allowed parents, subsidiaries, or affiliates to communicate with a defendant without violating the judgment. The Division concluded that each defendant should properly be able to communicate directly with its parent or subsidiary in carrying out the day-to-day business of the company. Such communications will not increase the risk of recurrence of the conduct alleged in the Complaint.

The defendants desired to place a geographical limitation in the proposed Judgment similar to that contained in the Complaint. They were informed that since the corporate defendant's activities subject to the Complaint were a result of the officers acts and those same officers would be responsible for corporate activities wherever they occurred the Antitrust Division would insist on the broad geographic relief. Accordingly, defendants withdrew their objection.

At one point during the consent negotiations the Antitrust Division considered requiring that the judgment continue in existence for 25 years. However, the Division eventually concluded that a ten year expiration date would provide sufficient injunctive protection.

V

REMEDIES AVAILABLE TO POTENTIAL
PRIVATE LITIGANT

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 Consent Judgment in this proceeding will neither impair nor assist the bringing of any such private actions. Under the provision of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), this Consent Judgment has no prima facie effect in any lawsuits which may be pending or hereafter brought against the defendants.

VI

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 Ralph T. Giordano, Antitrust Division, U.S. Department of Justice, Room 3630, 26 Federal Plaza, New York, New York 10007, within the sixty (60) day period provided by the Act. These comments and the Department's response to them, will be filed with the Court and published in the Federal Register. All comments received 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 it is necessary. The proposed Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for such order as may be necessary or appropriate for its modification, interpretation or enforcement.

VII

ALTERNATIVES TO THE PROPOSED CONSENT JUDGMENT

The alternative to the proposed Judgment was a full trial of the issue on the merits and on relief. The Antitrust Division considers the substantive language of the Final Judgment to be of sufficient scope and effectiveness to make litigation on the issues unnecessary, as the Judgment provides appropriate relief against the violations charged in the Complaint.

VIII

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) were considered in formulating this proposed Judgment. Consequently, none are submitted pursuant to such Section 2(b).

Dated: 20 APR 1979

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