

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :  
 :  
 Plaintiff, :  
 :  
 v. : Civil Action No.  
 : 78 Civ. 683 (JM)  
 :  
 BLACK MILLWORK CO., INC.; :  
 HUSSEY-WILLIAMS MILLWORK CO., INC.; :  
 STURTEVANT MILLWORK CORP.; and :  
 WHITTIER-RUHLE MILLWORK CO., :  
 :  
 Defendants. :  
 :  
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*filed* 31 AUG 1979

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

I

NATURE OF THE PROCEEDINGS

On April 10, 1978 the Government 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 had combined and conspired in violation of Section 1 of the Sherman Act (15 U.S.C. § 1) from at least as early as 1966 to raise, fix, and stabilize the wholesale prices and discounts at which Andersen brand products and accessories and wood grilles manufactured by Webb Manufacturing, Inc., and Coffman Window Grilles, a division of Vinador Company, were sold in the Metropolitan New York Area.

Entry by the Court of the proposed Final Judgment will terminate this action. However, the Court will retain jurisdiction over the matter for ten years for possible further proceedings which may be needed to interpret, modify, or enforce the judgment or to punish violations of any of the provisions thereof.

## II

### DESCRIPTION OF THE PRACTICES INVOLVED IN THE ALLEGED VIOLATIONS

The defendants are wholesale distributors of Andersen brand products and accessories and wood grilles manufactured by Webb Manufacturing, Inc., and Coffman Window Grilles. Their combined sales of such products in the Metropolitan New York Area in 1976 were over \$15 million.

In forming and effectuating the combination and conspiracy alleged in the Complaint, the defendants and co-conspirators communicated to one another at meetings, in telephone conversations and on other occasions, agreement upon the prices to be suggested in their Suggested List Price catalogs for Andersen brand products and accessories and wood grilles; used these revised catalogs in determining the prices at which Andersen brand products and accessories and wood grilles were sold to their retail customers; and agreed to the discount they would apply to the suggested list price for the sale of Andersen brand products and accessories and wood grilles in the Metropolitan New York Area. The evidence produced at trial would show that as a result of the conspiracy, the wholesale prices of Andersen brand products and accessories and wood grilles in the Metropolitan New York Area have been fixed, raised, and maintained at artificial and noncompetitive levels; purchasers of Andersen brand products and accessories and wood grilles in the Metropolitan New York Area have been deprived of free and open competition; and competition in the sale of Andersen brand products and accessories and wood grilles has been restrained.

## III

### EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The Government and the defendants have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and

Penalties Act. This 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 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 prohibits each defendant 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 Andersen brand products and accessories and wood grilles are offered for sale or from adopting or following any practice, plan, program, or device having a similar purpose or effect. Each defendant is 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 Andersen brand products and accessories and wood grilles. Each defendant is also enjoined from communicating, directly or indirectly, to any wholesale distributor information concerning the actual or proposed changes in price for Andersen brand products and accessories and wood grilles and the actual or proposed dates for any changes in the price for Andersen brand products and accessories and wood grilles.

Additionally, each defendant is prohibited from reviewing with any other wholesale distributor a proposed Andersen Suggested List Price Catalog or discount sheet; participating with any other wholesale distributor in sending a Suggested List Price Catalog or discount sheet to any person for printing; or instructing any person to publish an Andersen Suggested List

Price Catalog or discount sheet by referring such person to another wholesale distributor's Andersen Suggested List Price Catalog or discount sheet.

Each defendant can, however, communicate such information as is necessary to the bona fide purchase or sale of Andersen brand products and accessories and Webb wood grilles or Coffman wood grilles between wholesale distributors. The proposed Judgment does not prohibit any communication between a defendant and its subsidiaries, affiliates or parent.

Each defendant must establish a program for dissemination of information concerning the Final Judgment as well as compliance with it. This program must involve each corporate officer, director, employee and agent having responsibilities or authority over the establishment of the wholesale prices at which Andersen brand products and accessories and wood grilles are sold, who must be advised of his obligations under the Judgment. Each defendant is required to furnish the Government within one hundred and twenty (120) days of the entry of the Final Judgment, and thereafter upon request, 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 its obligations to comply with the Judgment and shall 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.

It applies to each defendant's activities anywhere in the United States.

The defendants are bound by the prohibitions of the proposed Judgment for ten years from the date of its entry.

C. Effect of the Proposed Judgment on Competition

The provisions of the proposed Final Judgment are designed to prevent any recurrence of the illegal conduct alleged in the Complaint and contain all of the relief sought in the Complaint. The proposed Judgment should ensure that no future agreements or combinations between or among the defendants to fix, raise, maintain, or stabilize the wholesale price of Andersen brand products and accessories and wood grilles will be arranged.

The proposed Judgment provides methods for determining defendants' compliance with the terms of the Judgment. The Antitrust Division, through duly authorized representatives, may interview officers, employees, and agents of each defendant regarding its compliance with the Judgment. Representatives of the Division 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 on matters contained in the Judgment.

Accordingly, the Government believes that the public interest is best served by the entry of the proposed Judgment. Further litigation would not result in any additional relief.

IV

ALTERNATIVE REMEDIES CONSIDERED  
BY THE ANTITRUST DIVISION

The defendants initially proposed a Final Judgment which the Government concluded would not ensure that the conspiracy charged in the Complaint would not continue or recur. The Government offered a counter-proposal from which the Final Judgment was negotiated.

The primary point of difference that was ultimately compromised between the parties related to the injunction prohibiting the defendants from purchasing from one another. The defendants drafted a proviso to Section IV(C) which authorized certain arm's-length dealings between wholesale distributors. The Government agreed to this modification since the conduct contemplated is lawful and does not increase the risk of recurrence of the illegal acts alleged in the Complaint.

The defendants also proposed a proviso for Section III which would allow parents, subsidiaries, or affiliates to communicate with a defendant without violating the judgment. The Government agreed because each defendant should properly be able to communicate directly with its parent, subsidiary or affiliate in carrying out the day-to-day business of the company. Such communications will not increase the risk of recurrence of the illegal conduct alleged in the Complaint.

At one point during the negotiations the Government considered requiring the Final Judgment to continue in existence for twenty-five years. However, the Government eventually concluded that a ten-year injunctive period would provide sufficient protection.

## V

### REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGATION

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 Final Judgment will neither impair nor assist the bringing of any such private actions. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), this Final 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-day period provided by the Act. These comments and the Government'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 Government, 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 that 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 FINAL JUDGMENT

The alternative to the proposed Judgment is a full trial on the merits. The Government considers the proposed Final Judgment to be of sufficient scope and effectiveness to make litigation on the issues unnecessary, as the Judgment provides full 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: New York, New York

31 AUG 1979 ~~1979~~

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