

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROCKWELL INTERNATIONAL CORPORATION,
THE SINGER COMPANY, and
TEXTRON INC.,

Defendants.

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Civil Action No. 78-3656

filed: 5/13/80

COMPETITIVE IMPACT STATEMENT

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

I

NATURE AND PURPOSE OF THE PROCEEDING

On November 1, 1978, the United States filed a civil antitrust Complaint under Section 4 of the Sherman Act (15 U.S.C. § 4) to enjoin the above-named corporate defendants from continuing or renewing violations of Section 1 of the Sherman Act (15 U.S.C. § 1).

The Complaint alleges that beginning in or about May 1973 and continuing thereafter until November 1977, the defendants engaged in a combination and conspiracy to restrain interstate commerce by fixing, maintaining and stabilizing the prices of gas meters. The

Complaint seeks a judgment by the court that the defendants engaged in a combination and conspiracy in restraint of trade in violation of Section 1 of the Sherman Act and an order to enjoin them from continuing or resuming such activities in the future.

Proceedings in this case were stayed pending disposition of a companion criminal prosecution, United States v. Rockwell International Corporation, et al., Criminal No. 78-325 (E.D. Pa.). The indictment, returned by a grand jury on November 1, 1978, charged Rockwell International Corporation and Textron Inc. with a criminal violation of the Sherman Act arising out of the same conspiracy alleged in the Complaint. On January 15, 1979, Rockwell International Corporation entered a plea of guilty. On January 25, 1979, Textron Inc. was found guilty after a jury trial. On January 26, 1979, the Honorable Edward N. Cahn, United States District Court Judge, imposed fines of \$525,000 against Rockwell and \$200,000 against Textron. Both fines were paid on February 8, 1979, and the criminal case is now concluded.

The Singer Company was named as an unindicted co-conspirator in the criminal case. Singer was not indicted in the criminal case because of its voluntary disclosure to the Department of Justice of its participation in the price-fixing conspiracy. The decision not to press criminal charges against Singer was in accord with the Antitrust Division policy of leniency designed to encourage business firms to come forward with information about suspected antitrust wrongdoing.

II

THE TERMS OF THE ALLEGED CONSPIRACY

The three corporate defendants are engaged in the production and sale of the types and sizes of gas meters commonly used by public utility companies, and commercial and industrial concerns to measure the flow of gas. Rockwell International makes and sells gas meters under the Rockwell name. Textron Inc. makes and sells gas meters through a division called Sprague Meter Company. The Singer Company makes and sells gas meters through a division called American Meter Company. The Complaint alleges that the defendant corporations have accounted for approximately 98 percent of total sales in the United States of such gas meters. During the period of time covered by the Complaint the total sales of such gas meters by the defendants amounted to approximately 5.9 million units valued at approximately \$231 million.

The Complaint alleges that the defendants combined and conspired to restrain interstate commerce beginning in or about May 1973 until November 1977 in violation of Section 1 of the Sherman Act by fixing, raising, maintaining and stabilizing the prices of gas meters. As stated in the Complaint, for the purpose of forming and effectuating the conspiracy, the defendants: agreed to increase the prices of gas meters; published price lists and adopted pricing schedules in accordance with agreements reached; agreed to maintain published prices of gas meters; exchanged price lists and sales data for gas meters;

telephoned or otherwise contacted one another to coordinate prices to be bid on the sale of gas meters; telephoned or otherwise contacted one another to police the agreement and secure adherence to agreed upon increased prices; met periodically at hotels, motels, restaurants and airports and at the occasion of meetings of the American Gas Association, Institute of Gas Technology, Guild of Ancient Suppliers and other industry trade groups, and discussed pricing strategy including the coordinated increase of prices for gas meters and the curtailment and elimination of price cutting and discount practices; and coordinated bids so as to divide business and obtain either alternate awards or split awards of orders for gas meters. According to the Complaint, the conspiracy among the defendants has had the effect throughout the United States of raising and stabilizing the prices of gas meters at artificial and non-competitive levels, depriving buyers of gas meters of free and open competition in the sale of gas meters, and eliminating competition between the defendants in the sale of gas meters.

III

EXPLANATION OF THE PROPOSED JUDGMENT

The United States 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. The Final Judgment between the parties provides that there is 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 Final Judgment is conditioned upon a determination by the court that the proposed Final Judgment is in the public interest.

Gas meters are defined in the proposed Final Judgment as all sizes of diaphragm meters used to measure the flow of gas. This definition is consistent with the focus of the investigation leading to the criminal indictment and the filing of the Complaint and the evidence introduced at the criminal trial of Textron Inc.

The proposed Final Judgment enjoins and restrains each defendant from directly or indirectly entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan, program, combination or conspiracy with any other manufacturer of gas meters to raise, fix, stabilize, maintain or adhere to prices, discounts or other terms or conditions for the sale of gas meters to any third person.

The proposed Final Judgment also enjoins and restrains each defendant from communicating to, requesting from or discussing with any other manufacturer of gas meters information about (a) any past, present, future or proposed bid, or the consideration of whether to make any bid, for the sale of gas meters to any third person; (b) any past, present, future or proposed price, discount or other term or condition for the sale of gas meters or the consideration of whether to make any change in any actual or proposed price, discount or other term or condition for the sale of gas meters; or (c) gas meter production or sales volume or costs. This restraint on communications

does not apply to any communication that is made to the public or the trade generally but is not made directly to any other manufacturer of gas meters and any necessary communication in connection with a bona fide contemplated or actual purchase or sales transaction between the parties to the communication.

The proposed Final Judgment requires each defendant to take affirmative steps to advise each of its employees who has management responsibility for the sale of gas meters or any responsibility for or authority over the establishment of gas meter prices of the defendant's and the employee's obligations under the judgment and the Sherman Act. Each defendant is required to furnish a copy of the Final Judgment to each of the described employees within 60 days after the judgment is entered, and to each person who becomes a described employee within 60 days of the person's assuming the described position. In addition, each defendant is required to distribute, at least once every two years, a copy of the Final Judgment and a written directive to each of the described employees. The directive must include a warning that noncompliance with the Final Judgment and the Sherman Act will result in disciplinary action, which may include dismissal, and advice that the defendant's legal advisors are available for consultation concerning compliance questions. Upon receipt of the judgment and directive, the employee must submit a signed statement to his employer. The signed statement must acknowledge that the employee has received and read the judgment and directive, that he had been advised and understands that noncompliance will result

in disciplinary action, which may include dismissal, and that he had been advised and understands that noncompliance with the judgment may result in conviction for contempt of court and fine or imprisonment, or both.

The proposed Final Judgment also provides that each defendant require, as a condition of the sale or other disposition of all, or substantially all, of the total assets of its gas meter business that the acquiring party agree to be bound by the provisions of the Final Judgment. The acquiring party must file with the court, and serve on the United States, its consent to be bound by the judgment.

The Department of Justice is given access under the proposed Final Judgment to the files and records of the defendant corporations, subject to reasonable notice requirements, in order to examine such records to determine compliance or noncompliance with the Final Judgment. The Department is also granted access to interview officers, directors, agents or employees of the defendants to determine whether the defendants and their representatives are complying with the Final Judgment. Finally, the defendants, upon the written request of the Department of Justice, shall submit reports in writing, under oath if requested, with respect to any of the matters contained in the Final Judgment.

The Final Judgment is to be in effect for ten years from its date of entry.

IV

REMEDIES AVAILABLE TO PRIVATE LITIGANTS

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's fees. The entry of the proposed Final Judgment will neither impair nor assist any person in bringing or prosecuting any private antitrust claim arising out of the combination and conspiracy charged in the Complaint. Under Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), this Final Judgment may not be used as prima facie evidence in legal proceedings against the defendants.

Shortly after the commencement of this case and the criminal case by the United States a number of private actions were filed in various federal district courts throughout the United States seeking treble damages. On January 17, 1979, the Panel on Multi-district Litigation consolidated the private actions before Judge Charles R. Weiner, In Re Gas Meter Antitrust Litigation, M.D.L. No. 341 (E.D. Pa.). All of the consolidated private actions were settled by the parties and have been dismissed.

V

PROCEDURES AVAILABLE FOR MODIFICATION
OF THE PROPOSED FINAL JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Anthony V. Nanni, Department

of Justice, Antitrust Division, 10th & Constitution Avenue, N.W., Washington, D.C. 20530, 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 Final Judgment at any time prior to its entry if it should determine that some modification is appropriate and necessary to the public interest. The proposed Final Judgment 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 its modification or enforcement. The Final Judgment is to remain in effect for a period of ten years from the date of its entry.

VI

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States originally proposed a decree provision requiring each defendant to withdraw its present price announcements and lists, to adopt new gas meter prices and terms and conditions of sale for gas meters on the basis of its own cost figures and judgment, and to submit an affidavit to the court and plaintiff certifying that such new prices and conditions for sale were independently arrived at. This proposal was withdrawn because each of the defendants had issued new prices after the initiation of the civil and criminal cases. In addition, each of the defendants has submitted to the

Department of Justice an affidavit executed by one of its officers stating that its current prices were independently determined. These affidavits are filed by the United States with this Competitive Impact Statement.

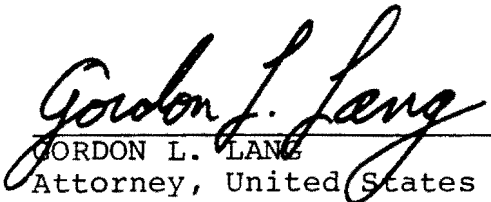
The proposed Final Judgment will dispose of the United States' claim for injunctive relief. The only alternative available to the Department of Justice is a trial of this case on the merits. Such a trial would require a substantial expenditure of public funds and judicial time. Since the relief obtained in the proposed Final Judgment is substantially similar to the relief the Department of Justice would expect to obtain after winning a trial on the merits, the United States believes that entry of the proposed Final Judgment is in the public interest.

VII

DETERMINATIVE MATERIALS

Each of the defendants has submitted an affidavit stating its current prices were independently determined. Those affidavits are filed with this Competitive Impact Statement.

Respectfully submitted,



GORDON L. LANE
Attorney, United States Department
of Justice
Antitrust Division, Room 3248
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 633-2485

Dated:

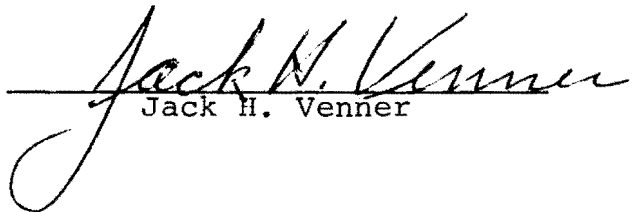
AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA)
 : ss. :
COUNTY OF PHILADELPHIA)

JACK H. VENNER, being duly sworn, deposes and says:

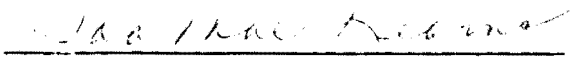
1. I am the President of the American Meter Division of The Singer Company, and I am authorized to make this affidavit on its behalf.

2. Based upon my personal knowledge and my consultations with other officers and employees of the American Meter Division of The Singer Company, to the best of my knowledge and belief, all prices of gas meters and terms and conditions for the sale of gas meters that the American Meter Division of The Singer Company has adopted and issued since at least November 1977 have been adopted and issued solely as a result of the American Meter Division of The Singer Company's independent business judgment.



Jack H. Venner

Sworn to before me this
7 day of March 1980.



Notary Public



Sprague Meter Division of Textron Inc.

35 South Avenue
Bridgeport, CT 06601
203/333-4172
Telex: 964329

COMMONWEALTH OF CONNECTICUT:
COUNTY OF FAIRFIELD : SS

PHILIP R. SAYRE, being duly sworn according to law, deposes and says that he is the President of the Sprague Meter Division of Textron Inc., that he is authorized to make this affidavit on its behalf, and that, to the best of his knowledge and belief, all prices of gas meters and terms and conditions for the sale of gas meters that Sprague Meter Division of Textron Inc. has adopted and issued since November 1977 have been adopted and issued solely as a result of Sprague Meter Division of Textron Inc. independent business judgment.

PHILIP R. SAYRE
President
Sprague Meter
Division of Textron Inc.

Sworn to and Subscribed
before me this 10th day
of March 1980.

NOTARY PUBLIC