

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil Action No. 79-204
v.)	
)	Filed: July 22, 1980
RHEEM MANUFACTURING COMPANY;)	
STATE INDUSTRIES, INC.;)	
BRADFORD-WHITE CORPORATION;)	
MOR-FLO INDUSTRIES, INC.;)	
A. O. SMITH CORPORATION;)	
AND)	
W. L. JACKSON MANUFACTURING)	
COMPANY,)	
)	
Defendants.)	

COMPETITIVE IMPACT STATEMENT

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

I

NATURE AND PURPOSE OF THE PROCEEDING

On January 17, 1979, 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 as early as 1963 and continuing at least until sometime in 1977, the defendants engaged in a conspiracy to restrain interstate commerce by fixing the prices of water heaters. 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 enjoining 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. Rheem Manufacturing Company, et al., Criminal No. 79-14 (E.D. Pa.). The indictment, filed on January 17, 1979, charged the above-named defendant corporations and eight individuals with a criminal violation of the Sherman Act arising out of the same conspiracy alleged in the complaint. The criminal case has been concluded. Four of the corporations (State Industries, Inc., Mor-Flo Industries, Inc., A. O. Smith Corporation, and W. L. Jackson Manufacturing Company) pleaded nolo contendere and were fined a total of \$1,075,000. Five of the individuals also pleaded nolo contendere. Two individuals served 90-days in prison and three received suspended sentences. The remaining two corporations and three individuals were acquitted after trial.

II

THE TERMS OF THE ALLEGED CONSPIRACY

The corporate defendants are the leading manufacturers of mass-produced automatic water heaters in the United States, and sell their products to plumbing wholesalers, hardware wholesalers, retail stores and mobile home manufacturers. During the period of time covered by the complaint the total sales of such water heaters by the defendants amounted to approximately \$2 billion.

The complaint alleges that the defendants conspired to restrain interstate commerce beginning in 1963 until at least sometime in 1977 in violation of Section 1 of the Sherman Act by fixing the prices of water heaters. As stated in the complaint, for the purpose of forming and effectuating the conspiracy, the defendants: agreed upon the published prices of water heaters and upon discounts

to be granted in geographic markets; confronted one another with deviations from agreed upon prices and discounts; contacted one another to check deviations from agreed upon prices and discounts; exchanged proposed and published price lists; and met secretly to cover up the conspiracy. According to the complaint, the conspiracy has stabilized the prices of water heaters at noncompetitive levels, deprived buyers of water heaters of free and open competition, and restrained competition between the defendants in the sale of water heaters.

III

EXPLANATION OF THE PROPOSED CIVIL JUDGMENT

The United States and all the defendants have stipulated that the court may enter the proposed Final Judgment at any time after compliance with the Act. The Final Judgment 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 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.

Water heaters are defined in the proposed Final Judgment as devices that automatically store and provide on demand hot water for use in private residences, commercial establishments and mobile homes. This definition is consistent with the focus of the investigation leading to the criminal indictment and the filing of the complaint.

The proposed Final Judgment enjoins the defendants from directly or indirectly entering into, adhering to, maintaining or furthering any agreement of any kind with any other manufacturer of water heaters to raise, fix, stabilize, maintain or adhere to prices, discounts or other terms or conditions for the sale of water heaters to any third person.

The proposed Final Judgment also enjoins the defendants from communicating to, requesting from or discussing with any other manufacturer of water heaters information about (a) any past, present, future or proposed price, discount or other term or condition for the sale of water heaters or (b) the consideration to make changes in such matters. This restriction does not apply to public communications not made directly to any other manufacturer of water heaters and to any necessary communication in connection with a bona fide contemplated or actual purchase or sales transaction between the communicating parties.

The proposed Final Judgment requires each defendant to advise employees with sales management or pricing responsibilities for water heaters (described employees) of the defendant's and the employees' obligations under the judgment and the Sherman Act. Each defendant must furnish a copy of the Final Judgment to each described employee within 60 days after the judgment is entered, and to each person who becomes a described employee within 60 days after the person assumes the position. Each defendant is also 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 warn that noncompliance with the Final Judgment and the Sherman Act will result in disciplinary action, which may include dismissal, and advise that the defendant's legal advisors are available for consultation concerning compliance questions. The employee then must submit a signed statement to his employer acknowledging that he has received and read the judgment and directive, and that he has been advised and understands that noncompliance will result in disciplinary action, which may include dismissal, and 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 water heater 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 defendants, subject to reasonable notice requirements, to determine compliance with the Final Judgment. The Department is also granted access to interview officers, directors, agents or employees of the consenting 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 prosecuting any private antitrust claim arising out of the 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. The cases were consolidated in the Eastern District of Pennsylvania before Judge J. William Ditter, Jr., who on January 23, 1980 approved a settlement agreement pursuant to which the defendants paid \$28.3 million to a class of water heater purchasers.

V

PROCEDURES AVAILABLE FOR MODIFICATION
OF THE PROPOSED FINAL JUDGMENT

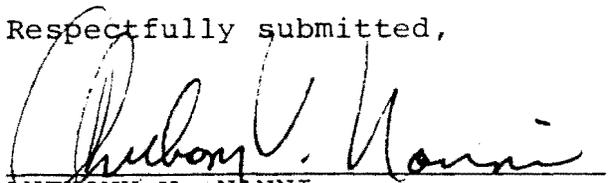
As provided by the Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Anthony V. Nanni, Department of Justice, Antitrust Division, 10th & Constitution Avenue, N.W., Washington, D.C. 20530, within the 60-day period provided by the Act. The comments 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.

VI

ALTERNATIVES TO THE PROPOSED
FINAL JUDGMENT

The proposed Final Judgment will dispose of the United States' claim for injunctive relief against the defendants. 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.

Respectfully submitted,



ANTHONY V. NANNI
Attorney, United States
Department of Justice
Antitrust Division, Room 3268
10th & Constitution Avenue, N.W.
Washington, D.C. 20530
(202) 633-2541

Dated: July 18, 1980