

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 LEVITON MANUFACTURING CO.,)
 INC.;)
 EAGLE ELECTRIC MANUFACTURING)
 CO., INC.;)
 SLATER ELECTRIC, INC.;)
 CIRCLE F INDUSTRIES, INC.;)
 BELL ELECTRIC COMPANY, INC.;)
 JOHN I. PAULDING, INC.;)
 TRIBORO ELECTRIC CORP.;)
 GEORGE P. BYRNE, INC.; and)
 GEORGE P. BYRNE, JR.,)
)
 Defendants.)

Civil Action
No.: H-77-555

filed 1 JUN 1979

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

This is a civil antitrust action brought by the United States against the above-named defendants pursuant to Section 4 of the Sherman Act, 15 U.S.C. § 4, to enjoin them from continuing violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Complaint, which was filed on October 27, 1977, alleges that the above-named defendants and certain co-conspirators engaged in a combination and conspiracy beginning sometime prior to 1962 and continuing thereafter until at least April, 1976, to restrain interstate trade and commerce in the manufacture and sale of residential grade wiring devices throughout the United States. The Complaint

seeks a judgment by the Court that the defendants have engaged in a combination and conspiracy in restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, together with an order by the Court to enjoin and restrain the defendants from such conduct in the future.

Proceedings in the case were stayed pending disposition of a companion criminal prosecution, United States v. Leviton Manufacturing Co., Inc., et al., Criminal No. H-77-77(D. Conn.). The criminal prosecution was initiated by a grand jury indictment returned on October 27, 1977 charging eight corporations and eleven individuals, including each of the defendants named in the civil case, with criminal violations of the Sherman Act arising out of the same conspiracy alleged in the civil complaint. Each of the defendants in the criminal case pleaded nolo contendere and was sentenced by United States District Judge M. Joseph Blumenfeld. The sentences included fines totalling \$920,000 and periods of incarceration ranging from 30 to 90 days for 9 of the individual defendants. The last defendant was sentenced on March 10, 1978. The sentences have been served and the criminal case is now concluded.

II

THE TERMS OF THE ALLEGED CONSPIRACY

Wiring devices are current carrying electrical products that serve primarily as a connection or control point for an electrical circuit, and certain products commonly used therewith which do not themselves carry an electrical current, including, switches, receptacles, power outlets, caps, connectors, incandescent lampholders, wallplates, weatherproof boxes and covers and combination devices. Wiring devices are sold in three channels of distribution--the distributor/

contractor, the consumer, and the original equipment manufacturer (OEM) channels. In the distributor/contractor channel wiring devices are usually sold to electrical wholesale distributors who in turn resell to electrical contractors who install the wiring devices in buildings. In the consumer channel wiring devices are sold to electrical wholesale distributors, hardware wholesalers, buying cooperatives, mass merchandisers, chain stores, and others for eventual resale at the retail level to consumers for repair, replacement, and home improvement purposes. In the OEM channel wiring devices are sold to manufacturers of other products who use the wiring devices as component parts in their manufacturing process. Wiring devices are manufactured in two grades--specification grade and residential grade. In general, specification grade is a heavy-duty, more expensive grade commonly specified by architects for use in high rise residential, commercial and industrial buildings. Residential grade, on the other hand, is a general-use, less expensive grade commonly used in single family homes and light duty uses.

The above named defendants, except George P. Byrne, Jr. and George P. Byrne, Inc., are the principal manufacturers and sellers of residential grade wiring devices in the United States. These defendants sell wiring devices in each of the three channels of distribution described above. During the period charged in the Complaint, these defendants had total sales of wiring devices in excess of \$1 billion. During 1975 alone, these defendants had sale of wiring devices totalling approximately \$100 million.

George P. Byrne, Jr. is a lawyer who organizes and provides administrative services to trade associations. George P. Byrne, Inc. is a corporation organized by George P. Byrne, Jr.

which provided administrative services to the Wiring Device Association (WDA), a now defunct trade association of residential grade wiring device manufacturers.

The Complaint alleges the defendants combined and conspired to unreasonably restrain interstate trade and commerce in the manufacture and sale of residential grade wiring devices in the United States from sometime prior to 1962 until at least April, 1976, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The alleged combination and conspiracy consisted of a continuing agreement, understanding and concert of action among the defendants and co-conspirators the substantial terms of which were to (1) raise, fix, maintain and stabilize the prices of residential grade wiring devices in the United States and (2) fix, maintain and stabilize the terms and conditions of sale thereof. In forming and effectuating the combination and conspiracy alleged in the Complaint, the defendants and co-conspirators: (1) agreed upon prices, discounts and terms and conditions of sale for wiring devices; (2) published price lists and adopted policies in accordance with such agreements; (3) organized and maintained the Wiring Device Association (WDA) to further and conceal the combination and conspiracy; (4) scheduled and held rump sessions of the WDA to discuss and agree upon prices, discounts and terms and conditions of sale for wiring devices and to police and enforce agreements regarding the same; (5) met at the offices of certain defendants and elsewhere and telephoned or otherwise contacted one another to discuss, agree upon, and convey agreements regarding, prices, discounts and terms and conditions of sale for wiring devices and to police and enforce such agreements; (6) mailed and otherwise transmitted to one another marked-up and published price lists and other price

change information to implement agreements reached; and (7) met with, telephoned, and otherwise communicated with, certain non-conspirator wiring device manufacturers to convey agreements reached, induce subscription thereto and threaten economic reprisals for failure to follow such agreements. As alleged in the Complaint, the combination and conspiracy had the following effects: (1) prices for wiring devices were raised, fixed, maintained and stabilized at non-competitive levels; (2) terms and conditions of sale for wiring devices were fixed, maintained and stabilized at non-competitive levels; (3) price competition in the sale of wiring devices throughout the United States was restrained, suppressed and eliminated; and (4) purchasers of wiring devices were denied the benefits of full and open competition.

III

EXPLANATION OF THE PROPOSED JUDGMENT

The United States and the defendants have stipulated that a Final Judgment, in the form filed with the Court, may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. §§ 16(b) - (h). The proposed Final Judgment provides that entry of the Final Judgment shall be without admission by any party with respect to any issue of law or fact. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act entry of the proposed Final Judgment is conditioned upon the Court finding that its entry will be in the public interest.

The proposed Final Judgment enjoins the defendants for a period of ten years from (1) directly or indirectly entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan, program, combination or conspiracy with any other person engaged in the production or

sale of wiring devices to raise, fix, maintain or stabilize prices, discounts or terms or conditions of sale of wiring devices to any third person; (2) communicating to or requesting from any manufacturer of wiring devices any information concerning past, present or future prices, price differentials, terms or conditions of sale, discounts, and actual or proposed pricing policies for the sale of wiring devices; and (3) continuing, maintaining, reviving or belonging to the Wiring Device Association or any other trade association consisting primarily of residential grade wiring device manufacturers.

The only exception to the broad prohibitions of the Judgment concern necessary communications in connection with (1) bona fide contemplated or actual purchase or sales transactions between the parties to such communications; and (2) a bona fide transaction involving the actual or proposed acquisition of any manufacturer of wiring devices.

The proposed Final Judgment also enjoins and restrains defendants George P. Byrne, Jr. and George P. Byrne, Inc., for a period of ten years, from directly or indirectly organizing, holding office in, or being employed by a trade association of wiring device manufacturers.

In addition to the prohibitions described above, the proposed Final Judgment orders each manufacturing defendant (1) to file with the Court and serve on the plaintiff, within sixty days of the entry of the Final Judgment, an affidavit setting forth the announcement date, effective date and percentage of change, if included in the announcement letter, of each published price list for wiring devices issued by it during the period April 1, 1976 to the date of the Final Judgment; (2) to conduct such review of its prices and terms and conditions of sale for wiring device as is necessary to

determine if each such price and term or condition of sale has been independently arrived at, to independently review, redetermine and reissue each price or term or condition of sale not independently arrived at, and file with the Court and serve on the plaintiff within sixty days from the date of the Final Judgment an affidavit certifying that each of its prices and terms or conditions of sale for wiring devices has been independently arrived at; and (3) for a period of five years, prepare and maintain, within thirty days of each change in its published prices, discounts or terms or conditions of sale, an affidavit of one of its officers or directors that such officer or director has made reasonable inquiry and that to the best of his knowledge, information and belief said change was independently arrived at and was not the result of any agreement, understanding or communication with any other wiring device manufacturer.

The proposed Final Judgment also orders each corporate defendant to take certain affirmative steps to insure compliance with its provisions. Each corporate defendant is required to (1) furnish a copy of the Judgment to each of its officers and directors and each of its employees having supervisory sales or pricing responsibility for wiring devices within ninety days of the date of entry thereof; (2) obtain and retain a written receipt therefor from each such person; and (3) file with the Court and serve on the plaintiff an affidavit as to the fact and manner of its compliance with this provision. Thereafter, for a period of ten years, each corporate defendant is required to furnish a copy of the Final Judgment to each new officer and director and each new employee with supervisory sales or pricing responsibility for wiring devices and maintain a written record, bearing the signature of

such officer, director or employee, acknowledging receipt thereof. Each corporate defendant is also required, on an annual basis, to take affirmative steps to advise each of its officers and directors and each employee with supervisory sales or pricing responsibility for wiring devices of the company's and their personal obligations under the Final Judgment and the criminal penalties for violation thereof. At a minimum, such affirmative steps shall include the distribution of a written directive explaining the antitrust laws and the obligations imposed by the Final Judgment and the holding of a meeting or meetings to review and explain the antitrust laws and the Final Judgment and the obligations imposed thereby. Each corporate defendant is required to maintain a copy of each such directive and a written record of each such meeting.

The proposed Final Judgment also orders each manufacturing defendant to require as a condition of the sale or other disposition of all or substantially all of its total assets of its wiring devices business that the acquiring party file with the Court and serve on the plaintiff its consent to be bound by the Final Judgment.

The proposed Final Judgment provides that for the purpose of determining or securing compliance therewith, each corporate defendant shall permit duly authorized representatives of the Department of Justice to (1) inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in its possession or under its control which relate to any matter contained in the Final Judgment; and (2) interview any officer, director or employee of such defendant regarding any matter contained in the Final Judgment. The defendants are also required to submit such reports in writing, under oath if so requested, with respect to any matter con-

tained in the Final Judgment as may from time to time be requested by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division.

The proposed Final Judgment shall terminate ten years from the date of its 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, plus costs and reasonable attorney's fees, as well as for equitable relief. The United States is informed that certain persons, including certain state Attorneys General, have filed suits pursuant to Section 4 of the Clayton Act for money damages and equitable relief based on claims arising out of the combination and conspiracy alleged in the complaint in this case and that these various suits have been consolidated before the Honorable Jack B. Weinstein, Judge of the United States District Court for the Eastern District of New York, under the caption, In Re Wiring Device Antitrust Litigation, M.D.L. No. 341 (E.D.N.Y.) by the Judicial Panel on Multi-District Litigation.

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 alleged in the Complaint. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment, if entered, may not be used by any private plaintiff as prima facie evidence of any matter since it will have been entered before any testimony has been taken.

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 Joseph H. Widmar, 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 thereto 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 completely dispose of the United States' claim for injunctive relief. The only alternative available to the Department of Justice is a full trial of this case on the merits. Such a trial on the merits 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 request and obtain after winning a trial on the merits, the United States believes no substantial

purpose would be served by insisting on a trial on the merits and that entry of the proposed Final Judgment is in the public interest.

VII

DETERMINATIVE MATERIALS

There are no materials or documents which the United States considered determinative in formulating this proposed Final Judgment. Therefore, none are being filed along with this Competitive Impact Statement.

Peter A. Mullin

Peter A. Mullin

Attorney, Department of
Justice
Washington, D.C. 20530
(202)633-2485

1 JUN 1979

Dated: ~~May~~ ~~1979~~