

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil No. CA-3-81-0157-H
)	
v.)	Filed: February 6, 1981
)	
REVCO, D.S., INC., and)	
ZALE CORPORATION,)	
Defendants.)	
)	

COMPETITIVE IMPACT STATEMENT

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

I.

Nature and Purpose of the Proceeding

This is a civil action filed by the United States against Revco, D.S., Inc. of Twinsburg, Ohio and Zale Corporation of Dallas, Texas. The complaint, which was filed on February 2, 1981, alleged that the proposed acquisition by Revco of all of the assets of the Skillern Drug Division of Zale Corporation (Skillern's) would violate Section 7 of the Clayton Act because competition between the two companies in the retail sale of ethical or prescription drugs would be eliminated. The case was brought to enjoin Revco from acquiring the Skillern Drug Division of Zale Corporation.

The complaint alleged that the effect of the proposed acquisition of Skillern's by Revco may be substantially to lessen competition and to tend to create a monopoly in the sale of ethical drugs to the general public in three geographic areas in Texas in violation of Section 7 of the Clayton Act. In the Dallas-Fort Worth area Revco and Skillern's, combined, would have approximately 19.8

percent of ethical drug sales. In the El Paso area Revco and Skillern's, combined, would have approximately 23.9 percent of ethical drug sales, and in the Tyler area Revco and Skillern's, combined, would have 13.7 percent of such sales.

II.

Description of the Alleged Violation

On December 1, 1980, Revco entered into an agreement with Zale Corporation to acquire all of the assets of the Skillern Drug Division of Zale Corporation. Both Revco and Skillern's are engaged in the retail sale of ethical or prescription drugs to the general public.

Revco is a Michigan corporation, maintaining its principal place of business in Twinsburg, Ohio. Revco is the largest retail drug chain in the United States, operating approximately 1276 pharmacies in 24 states. For the fiscal year ending May 31, 1980, Revco had total corporate sales of \$1,092,797,000. As of December 11, 1980, Revco operated 58 pharmacies in the State of Texas, including 27 in the Dallas-Fort Worth area, with 1980 ethical drug sales of \$5,381,129; five in the El Paso area, with 1980 ethical drug sales of \$966,821; and three in the Tyler area, with 1980 ethical drug sales of \$257,003.

Zale Corporation is a Texas corporation and maintains its principal place of business in Dallas, Texas. Zale Corporation owns and controls two wholly-owned subsidiaries, Skillern & Sons, Inc. and Skillern & Sons New Mexico, Inc., both Texas corporations, which were operated as the Skillern Drug Division of Zale Corporation. Skillern's is engaged principally in retail drug sales and, as of November 10, 1980, operated 144 pharmacies in the states of Texas and New Mexico with total sales of \$148,700,000. Of these stores, Skillern's operated 75 stores in the Dallas-Fort Worth area, with 1980 ethical drug sales of approximately \$21,966,200; 15 stores in the El Paso area, with 1980 ethical drug sales of approximately \$2,860,000; and 3 stores in the Tyler area, with 1980 ethical drug sales of approximately \$721,000.

The line of commerce involved in this transaction is the retail sale of ethical or prescription drugs to the general public. Ethical drugs are those drugs that are restricted to sale only on a physician's, dentist's, or other licensed practitioner's prescription, as provided by federal law and the laws of the State of Texas. The retail outlets from which ethical drugs are sold to the general public are pharmacies. These pharmacies are licensed by the State of Texas and ethical drugs must be dispensed by a pharmacist, also licensed by the State of Texas.

The three geographic markets in which Revco and Skillern's are direct competitors are the Dallas-Fort Worth area, the El Paso area and the Tyler area. The Dallas-Fort Worth area includes Dallas and Tarrant counties and the incorporated cities of Lewisville and Plano in the State of Texas; this area includes the cities of Dallas and Fort Worth. The El Paso area includes the county of El Paso, and the Tyler area includes Smith County, Texas. There are also Skillern's stores in other areas of the State of Texas; however, these three areas are the locations where Revco and Skillern's directly compete against each other in the retail sale of ethical drugs.

III.

Explanation of the Proposed Final Judgment

The United States and the defendants have stipulated that a Final Judgment, in the form negotiated by the parties, may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act, provided that the United States has not withdrawn its consent. That stipulation provides that there has been no admission by any party with respect to any issue of law or fact. This stipulation also rescinds the stipulation of the parties on February 2, 1981 by which the defendants agreed not to consummate the acquisition pending the outcome of settlement negotiations. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, entry of the Final Judgment is conditioned upon a determination by the Court that it is in the public interest.

Section III of the proposed Final Judgment will dismiss Zale Corporation from the action.

Section IV of the proposed Final Judgment expressly provides that it applies to Revco, its officers, directors, agents, employees, subsidiaries, affiliates, successors, and assigns, and to all other persons in active concert or participation with any of them who receive notice of this Final Judgment by personal service or otherwise.

Section V of the proposed Final Judgment orders Revco to divest itself of from 28 to 31 drug stores in three geographic areas in Texas. These drug stores are termed Assets in the Final Judgment where "Assets" is defined as certain drug stores acquired by Revco from Skillern's and certain drug stores operated by Revco. In the Dallas-Fort Worth area, the divestiture provisions require Revco to divest itself of each of the drug stores listed in 1(a) of Appendix A, and one drug store from each grouping of drug stores listed in 1(b) of Appendix A, to another entity. Revco is also ordered to divest itself of one drug store from each of the groupings for El Paso, Texas, as listed in 2(a) of Appendix A, to a company presently operating drug stores in that market, or four drug stores, including one from each of the groupings for El Paso listed in 2(a) of Appendix A, to a new entrant into the market. The proposed Final Judgment orders Revco to divest itself of one drug store from the grouping for Tyler, Texas listed in 3(a) of Appendix A, to a company presently operating drug stores in the market, or two drug stores, one of which is listed in 3(a) of Appendix A, to a new entrant into the market. The drug store groupings to be divested also are listed as Appendix A of this Competitive Impact Statement. The Final Judgment further specifies that "Assets" means the leasehold estates created by and all rights conveyed under or by virtue of the leases, the fixed assets and the inventories of each drug store.

Section V further requires that the divestiture of these drug stores occur within nine months of the date of entry of this Final Judgment, or before January 31, 1982, whichever date is later.

Section V also gives the government the right to object to the proposed sale of each of the groupings of drug stores to be divested. If the government does object, the period for divestiture will be tolled during the period that it takes the government to evaluate the proposed sale, and make its objection known. If Revco challenges the objection and the Court sustains the objection, the period for divestiture will be tolled during the pendency of any Court proceedings.

Section VI provides for the Court, upon the government's request, to appoint a trustee, at Revco's expense, to sell each of the groupings of drug stores to be divested which Revco has not divested within the period specified. The trustee has the authority to dispose of each grouping of drug stores, subject to the approval of the Court.

Section VII provides that Revco may not reacquire any of the drug store locations divested pursuant to the Final Judgment, except to enforce a valid security interest in such drug store obtained to insure payment from the purchaser, or to reassume its obligations on leaseholds in the event that the purchaser defaults. Revco must use its best efforts to resell any drug store reacquired in this manner and, in any event, may not operate that location as a drug store.

Section VIII requires Revco to provide the government with a monthly report detailing its efforts to sell the drug stores to be divested.

Section IX orders Revco to maintain each of the drug stores listed in Appendix A as going businesses and to continue normal business operations until each drug store is sold.

Under Section X of the proposed Final Judgment, the Department of Justice would have access, upon reasonable notice, to the records and personnel of Revco in order to determine the defendant's compliance with the provisions of the Final Judgment.

Under Section XI of the proposed Final Judgment, jurisdiction is retained by the Court for the purpose of enabling any party to apply for such orders or directions as may be necessary to carry out the Final Judgment, for modification of any of its provisions, or for punishment of violations of its provisions.

Section XII indicates that the proposed Final Judgment is in the public interest.

IV.

Remedies to Private Plaintiffs

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured in his business or property 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. Entry of the proposed Final Judgment in this proceeding will neither impair nor assist the bringing of any such private antitrust action.

Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Final Judgment may not be used as prima facie evidence in any subsequent private lawsuit which may be brought against the defendants since it is a consent judgment that will be entered before any testimony has been taken.

V.

Procedures Available for Modifications of the Proposed 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 Donald C. Klawiter, Chief, Dallas Field Office, Department of Justice, 1100 Commerce Street, Room 8C6, Dallas, Texas 75242, within the 60-day period provided by the Act. These comments and 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 of the Final Judgment is necessary.

VI.

Alternatives to the Proposed
Final Judgment

The proposed Final Judgment requires Revco to divest from 28 to 31 drug stores in three geographic areas in Texas. The divestiture of these drug stores will eliminate the anticompetitive effects of the proposed acquisition of the Skillern Drug Division by Revco in each of the relevant geographic markets where both Revco and Skillern's are substantial competitors in the retail sale of ethical drugs to the general public. Since the relief obtained in the Final Judgment eliminates the anticompetitive effects of the proposed acquisition in each geographic market, it is substantially similar to the relief the Department of Justice could expect to obtain after a trial on the merits. Although most provisions of the proposed judgment were revised and refined in the course of the negotiations, no relief substantially different in kind was considered by the government.

VII.

Determinative Documents

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

/s/ Mary Coleen T. Sewell
MARY COLEEN T. SEWELL

/s/ Larry R. Patton
LARRY R. PATTON

Attorneys, Department of Justice

Dated: February 6, 1981

APPENDIX A

1. In the Dallas-Fort Worth area the Assets to be divested shall consist of the following:

(a) Each drug store listed below:

Skillern's Store 6003
2703 South Lancaster
Dallas, Texas 75216

Skillern's Store 6007
4900 Ross Avenue
Dallas, Texas 75206

Skillern's Store 6029
326 East Main
Grand Prairie, Texas 75050

Skillern's Store 6056
1343 Camp Wisdom
Dallas, Texas 75237

Skillern's Store 6072
3065 Josey Lane
Carrollton, Texas 75006

Skillern's Store 6084
7602 Campbell Road
Dallas, Texas 75248

Revco Store 267
3401 Mansfield Highway
Fort Worth, Texas 76119

Revco Store 295
8433 Lake June Road
Dallas, Texas 75217

(b) One drug store from each of the following groups of drug stores:

(1) Skillern's Store 6020
975 Irving Boulevard
Irving, Texas 75060

Skillern's Store 6140
3624 N. Belt Line
Irving, Texas 75062

Revco Store 296
1019 W. Rochelle
(Pandy Town Shopping Center)
Irving, Texas 75062

(2) Skillern's Store 6039
1511 New York
Arlington, Texas 76010

Revco Store 271
1600 E. Abrams
Arlington, Texas 76010

- (3) Skillern's Store 6139
2424 South Collins
Arlington, Texas 76014
- Revco Store 273
2212 New York Avenue
Arlington, Texas 76010
- (4) Skillern's Store 6089
724 East Pipeline Road
Hurst, Texas 76053
- Skillern's Store 6129
510 I Harwood Village
Bedford, Texas 76021
- Revco Store 270
1307 Brown Trail
Bedford, Texas 76021
- (5) Skillern's Store 6049
2737 Park Row
Arlington, Texas 76010
- Revco Store 265
1530 Bower Road
Pantego, Texas 76013
- (6) Skillern's Store 6034
4701 East Lancaster
Fort Worth, Texas 76103
- Revco Store 280
1111 Oakland Boulevard
Fort Worth, Texas 76103
- (7) Skillern's Store 6086
3177 Denton Highway
Haltom City, Texas 76117
- Revco Store 263
4100 Denton Highway
Haltom City, Texas 76117
- (8) Skillern's Store 6027
4401 River Oaks
Fort Worth, Texas 76114
- Revco Store 298
2254 Jacksboro Highway
Fort Worth, Texas 76114
- (9) Skillern's Store 6009
504 West Rosedale
Fort Worth, Texas 76104
- Revco Store 268
1729 Eighth Avenue
Fort Worth, Texas 76110
- (10) Skillern's Store 6078
2720 West Seminary
Fort Worth, Texas 76133
- Revco Store 264
5205 McCart
Fort Worth, Texas 76115

- (11) Skillern's Store 6060
3001 Walton
Fort Worth, Texas 76133
- Revco Store 285
3838 Alta Mesa Boulevard
Fort Worth, Texas 76133
- (12) Skillern's Store 6008
4808 Camp Bowie Boulevard
Fort Worth, Texas 76107
- Revco Store 269
4601 Camp Bowie Boulevard
Fort Worth, Texas 76107
- (13) Skillern's Store 6066
8133 Highway 80 West
Fort Worth, Texas 76116
- Revco Store 2816
Las Vegas Trail
Fort Worth, Texas 76108
- (14) Skillern's Store 6127
319 South Cedar Ridge
Duncanville, Texas 75116
- Revco Store 282
267 West Camp Wisdom
Redbird Village Shopping Center
Duncanville, Texas 75116
- (15) Skillern's Store 6050
1806 Avenue K
Plano, Texas 75074
- Skillern's Store 6097
2109 Parker Road #100
Plano, Texas 75074
- Skillern's Store 6109
3045 West 15th
Plano, Texas 75074
- Revco Store 4102
907 W. Parker Road
Plano, Texas 75074
- (16) Revco Store 242
5006 N. Jupiter Road
Garland, Texas 75042
- Revco Store 2815
1332 S. Plano Road
Richardson, Texas 75081
- (17) Skillern's Store 6024
Saturn/Northwest Highway
Garland, Texas 75041
- Skillern's Store 6030
408 Casa Linda Plaza
Dallas, Texas 75218
- Skillern's Store 6092
3106 N. Buchner
Dallas, Texas 75228
- Revco Store 291
Oates Park Shopping Center
Mesquite, Texas 75150

2. In the El Paso area, the Assets to be divested shall consist of one of the following:

(a) One drug store from each of the following groups of drug stores to a drug store chain (four or more stores) competitor presently in the El Paso area, other than the leading competitor in that area:

(1) Skillern's Store 6474
3333-B North Yarborough
El Paso, Texas 79925

Revco Store 690
10780 North Pebble Hills Blvd.
El Paso, Texas 79935

(2) Skillern's Store 6456
5579 Alameda (Fox Plaza)
El Paso, Texas 79905

Revco Store 671
5516 Alameda
El Paso, Texas 79905

(b) One from each of the above groups of drug stores and two other drug stores located in the El Paso area to a new entrant into that area.

3. In the Tyler area, the Assets to be divested shall consist of one of the following:

(a) One drug store from the following group of drug stores to a drug store competitor presently in the Tyler area other than the two leading competitors in that area:

Skillern's Store 6098
813 North Broadway
Tyler, Texas 75701

Revco Store 289
1103 East Gentry
Tyler, Texas 75702

(b) One drug store from the above group and one other drug store located in the Tyler area to a new entrant into that area.