

1 BERNARD H. MEYERS
2 GLENDA R. JERMANOVICH
3 SHAUNA I. MARSHALL
4 Antitrust Division
5 U.S. Department of Justice
6 450 Golden Gate Avenue
7 Box 36046
8 San Francisco, CA 94102
9 Telephone: 415/556-6300

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,)
11 Plaintiff,) Civ. No. C-78-1785-WAI
12 v.)
13 B.F. GOODRICH COMPANY,) COMPETITIVE IMPACT STATEMENT
14 Defendant.) Filed: December 15, 1980
15)

16
17 Pursuant to Section 2(b) of the Antitrust Procedures and
18 Penalties Act [15 U.S.C. § 16(b)] the United States hereby submits
19 this Competitive Impact Statement relating to the proposed Consent
20 Judgment submitted for entry in this civil antitrust proceeding.

21 I.

22 NATURE OF PROCEEDING

23 On August 8, 1978 the United States Department of Justice
24 filed a civil complaint against the B.F. Goodrich Company pursuant
25 to Section 4 of the Sherman Act [15 U.S.C. § 4], alleging a
26 conspiracy to fix, raise, maintain and stabilize the retail and
27 wholesale prices of B.F. Goodrich tires sold in the western United
28 States. The Complaint asks the Court to find that the defendant has
29 violated Section 1 of the Sherman Act [15 U.S.C. § 1] and further
30 requests the Court to enjoin the continuance of the conspiracy.

31 Entry by the Court of the proposed Consent Judgment will
32 terminate this action. The Court will retain jurisdiction over

1 this matter for such further proceedings as may be required to
2 interpret, modify or enforce the proposed judgment or to punish
3 violations thereof.

4 II.

5 DESCRIPTION OF PRACTICES INVOLVED
6 IN THE ALLEGED VIOLATION

7 The defendant, the B.F. Goodrich Company, manufactures tires
8 and sells them to, among others, independent wholesalers and
9 retailers. B.F. Goodrich also sells tires to the public through
10 its company-owned stores and leased department operations. Because
11 of this distribution system, B.F. Goodrich and independent
12 wholesale distributors are actual or potential competitors for the
13 sale of B.F. Goodrich tires to independent retailers. Similarly,
14 by selling B.F. Goodrich tires to the public through its company-
15 owned stores and leased department operations, B.F. Goodrich
16 competes with independent retailers for the sale of B.F. Goodrich
17 tires to the public.

18 The Complaint in the case alleges that beginning at least as
19 early as 1972 and continuing through at least the date of the
20 commencement of the suit (August, 1978) the defendant met and
21 communicated with independent wholesalers and retailers in order
22 to fix, raise, maintain and stabilize retail and wholesale prices
23 of B.F. Goodrich tires. The Complaint further alleged that
24 1) the prices of B.F. Goodrich brand passenger tires have been
25 fixed, raised, maintained and stabilized at artificial and non-
26 competitive levels; 2) purchasers of B.F. Goodrich tires have
27 been deprived of the benefits of free and open competition in
28 the marketing of B.F. Goodrich tires; and 3) competition between
29 and among B.F. Goodrich and the conspirators in the sale of
30 B.F. Goodrich tires has been reduced and restrained.

31 / / /

32 / / /

1 III.

2 EXPLANATION OF THE PROPOSED
3 CONSENT JUDGMENT

4 The United States and defendant, the B.F. Goodrich Company,
5 have agreed, in a stipulation, that the consent judgment may be
6 entered by the Court at any time after compliance with the Antitrust
7 Procedures and Penalties Act. The proposed judgment provides that
8 there has been no admission by either party with respect to any
9 issue of fact or law. Under the provisions of Section 2(e) of the
10 Antitrust Procedures and Penalties Act, entry of the consent
11 judgment by the Court is conditioned upon a determination of the
12 Court that the proposed judgment is in the public interest.

13 A. Prohibited Conduct

14 The proposed judgment will prohibit the defendant for a
15 period of 10 years from the date of the Final Judgment from
16 entering into or adhering to any agreement, combination or mutual
17 understanding with any tire dealer to fix, raise, maintain or
18 stabilize the price, discount, mark-up or margin of profit at
19 which B.F. Goodrich tires are sold. The defendant is also enjoined
20 from entering into any agreement or understanding with tire
21 dealers which prohibits either tire dealers or B.F. Goodrich from
22 advertising the price of B.F. Goodrich tires. B.F. Goodrich is
23 also forbidden from encouraging or soliciting any complaints by
24 any tire dealer with respect to the pricing, discounting or
25 price-related advertising of any other tire dealer (including
26 B.F. Goodrich's own outlets). Nor may B.F. Goodrich take any
27 coercive or joint action against any tire dealer due to any
28 complaint or any communication from any other tire dealer
29 (including B.F. Goodrich's own outlets).

30 B.F. Goodrich may only suggest resale prices to tire
31 dealers under the conditions that in so doing it state to each
32 dealer that the prices are only being suggested by B.F. Goodrich

1 and that B.F. Goodrich and each dealer are free to sell at
2 whatever price, discount, markup or margin of profit they
3 may unilaterally choose. B.F. Goodrich is also prohibited
4 from suggesting or requiring that any tire dealer not offer
5 the dealer's own guarantee on B.F. Goodrich tires, and from
6 coercing or attempting to coerce any tire dealer to change its
7 prices or terms for the sale of B.F. Goodrich tires. The
8 proposed judgment covers all B.F. Goodrich tires used on pas-
9 senger cars, recreational vehicles, or light trucks. It does
10 not apply to B.F. Goodrich Brand tires sold to and actually
11 used by original equipment manufacturers. The proposed
12 judgment also covers B.F. Goodrich tires bearing the name
13 B.F. Goodrich (or variations thereof), and tires sold through
14 the B.F. Goodrich Brand Replacement Sales organization (or
15 successors thereto). Although the complaint only alleged
16 violations in the six western states, the proposed judgment
17 applies throughout the United States.

18 The proposed judgment applies to the defendant, its
19 officers, directors, employees, agents, successors and assigns.
20 Before the defendant may sell all or substantially all of its
21 Tire Group assets, the acquiring party must agree to be bound
22 by the judgment.

23 B. Other Provisions

24 The defendant is ordered for a period of 10 years to
25 distribute a copy of the judgment to each of its employees,
26 officers and directors with responsibility for the selling, pricing
27 and advertising of B.F. Goodrich tires at the wholesale or retail
28 level. The defendant must also provide a copy of the judgment to
29 all of its present dealers, and for a period of 4 years, to each
30 new franchised dealer. The defendant must distribute the initial
31 copy to employees, directors, officers and dealers within 60 days
32 after entry of the final judgment. An affidavit stating the manner

1 of compliance must be filed by defendant within 90 days
2 after entry of the judgment.

3 In addition to the annual distribution of the judgment,
4 B.F. Goodrich must conduct a compliance program. The program shall
5 require the defendant to take affirmative steps, including the
6 holding of annual meetings, to advise each of the officers and
7 other employees with any responsibility for the selling, pricing
8 and advertising of B.F. Goodrich tires of their obligations under
9 the judgment.

10 The United States Department of Justice is given access
11 under the proposed judgment to the files and records of
12 B.F. Goodrich, to examine such records for compliance or
13 non-compliance with the judgment. The Department is also granted
14 access to interview employees of the defendant to determine whether
15 the defendant is complying with the judgment.

16 C. Effect of the Proposed Judgment on Competition

17 The relief encompassed in the proposed consent judgment is
18 designed to prevent a recurrence of any of the activities alleged
19 in the Complaint. The prohibitory language of the judgment should
20 ensure that wholesale and retail prices of B.F. Goodrich tires
21 shall be arrived at independently by both the defendant and
22 individual tire dealers. The judgment contains sufficient
23 record-keeping requirements and access to defendant's records to
24 allow the Department to adequately monitor defendant's activities
25 in the future.

26 Accordingly, it is the opinion of the Department of Justice
27 that the proposed judgment is fully adequate to prevent future
28 antitrust violations by the defendant. It is also the view of the
29 Department that disposition of the case without additional
30 litigation is appropriate in view of the fact that the proposed
31 judgment includes the form and scope of relief equal to that which
32 might be obtained after a full airing of the issues.

1 IV.

2 ALTERNATIVES TO THE PROPOSED
3 CONSENT JUDGMENT

4 The alternative to the proposed Final Judgment considered
5 by the Antitrust Division was a full trial on the merits and on
6 relief. The Division considers the proposed Judgment to be of
7 sufficient scope and effectiveness to make a trial unnecessary,
8 since it provides appropriate relief against the violations
9 alleged in the Complaint.

10 In line with the Antitrust Division's policy in existence
11 at the time the case was filed, the Government originally
12 sought a perpetual decree. Thereafter, the Division's policy
13 in this regard changed to insistence on a term of 10 years,
14 the term specified in the decree.

15 V.

16 REMEDIES AVAILABLE TO POTENTIAL
17 PRIVATE PLAINTIFFS

18 Section 4 of the Clayton Act [15 U.S.C. § 15] provides
19 that any person who has been injured as a result of conduct
20 prohibited by the antitrust laws may bring suit in federal court
21 to recover three times the damages such person has suffered, as
22 well as costs and reasonable attorneys' fees. Following the
23 filing of the Government's Complaint in this action, several
24 lawsuits were brought on behalf of various classes of persons
25 allegedly injured as a result of the violation of the antitrust
26 laws alleged in the Government's suit. These lawsuits are now
27 in the discovery phase and are pending before this Court. (In
28 Re B.F. Goodrich Antitrust Litigation, MDL-386 including:
29 State of California v. B.F. Goodrich Co., Civil No. C-78-2263;
30 State of Arizona v. B.F. Goodrich Co., Civil No. 79-1841; State of
31 Colorado v. B.F. Goodrich, Civil No. C-80-0252). These plaintiffs
32 / / /

1 and any potential plaintiff will retain the same rights to seek
2 monetary and equitable remedies that they would have had if the
3 proposed judgment had not been entered. However, pursuant to
4 Section 5(a) of the Clayton Act [15 U.S.C. § 16(a)], this judgment
5 has no prima facie effect in the lawsuits which have been brought
6 or may be brought against defendant B.F. Goodrich.

7 VI.

8 PROCEDURES AVAILABLE FOR MODIFICATION
9 OF THE PROPOSED JUDGMENT

10 The proposed consent judgment is subject to a stipulation
11 by and between the United States and the defendant which provides
12 that the United States may withdraw its consent to the proposed
13 judgment at any time before the Court has found that entry of the
14 proposed judgment is in the public interest. By its terms, the
15 proposed consent judgment provides for the Court's retention of
16 jurisdiction of this action in order, among other reasons, to permit
17 either of the parties thereto to apply to the Court for such orders
18 as may be necessary or appropriate for the modification of the
19 Final Judgment.

20 As provided by Section 2(b) of the Antitrust Procedures
21 and Penalties Act, any persons wishing to comment on the proposed
22 consent judgment may, for the sixty (60) day period prior to the
23 effective date of the judgment, submit written comments to:

24 Anthony E. Desmond, Chief
25 San Francisco Field Office
26 Antitrust Division
27 U.S. Department of Justice
450 Golden Gate Avenue
Box 36046
San Francisco, CA 94102

28 The comments, and the responses thereto, will be filed
29 with the Court and published in the Federal Register. The
30 Department of Justice will evaluate all such comments and
31 determine whether there are any reasons for withdrawal of its
32 consent to the judgment.

VII.

DETERMINATIVE DOCUMENTS

Since there are no materials or documents which were determinative in formulating a proposal for the consent judgment, none are being filed by the plaintiff pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act.

/s/ Glenda R. Jermanovich

Glenda R. Jermanovich

/s/ Shauna I. Marshall

Shauna I. Marshall
Attorneys, Department of Justice