

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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UNITED STATES OF AMERICA, :
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 Plaintiff, :
 :
 v. : Civil Action No.
 : N-78-292
 HARVEY HUBBELL, INCORPORATED; :
 THE OHIO BRASS COMPANY; and :
 THE O.B. MERGER COMPANY, :
 : COMPETITIVE IMPACT
 : STATEMENT
 Defendants. :
 : Filed: September 17, 1981
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The United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)), submits this Competitive Impact Statement in connection with the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

NATURE AND PURPOSE OF THE PROCEEDING

On August 25, 1978 the Government filed a civil antitrust complaint under Section 15 of the Clayton Act (15 U.S.C. § 25) to prevent and restrain defendants Harvey Hubbell, Incorporated (Hubbell), The Ohio Brass Company (Ohio Brass) and The O.B. Merger Company (OB) from violating Section 7 of the Clayton Act (15 U.S.C. § 18). The Complaint states that Hubbell formed a subsidiary, OB, for the purpose of acquiring Ohio Brass by merging it into OB. The Complaint alleges that the effect of this acquisition of Ohio Brass may be substantially to lessen competition in the manufacture and sale of underground power distribution equipment in that: a) competition between Hubbell and Ohio Brass in the manufacture and sale of underground power distribution equipment will be eliminated; b) concentration in the underground power distribution equipment market will be increased; and c) competition generally in the manufacture and sale of underground

power distribution equipment will be lessened. Underground power distribution equipment is defined in the Complaint as "a cluster of products purchased primarily by coal mining companies for installation in mines in order to transmit, utilize, regulate and distribute electrical power in connection with the equipment used in the mining of coal."

The Court's entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction over the matter for possible further proceedings to construe or carry out the Judgment, to modify any of its provisions, to enforce compliance with the Judgment, or to punish violations of any of its provisions.

II

THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

The Complaint alleges that Hubbell was the leading manufacturer and seller of underground power distribution equipment at the time the Complaint was filed. In 1977, its sales of approximately \$17 million of such equipment accounted for approximately 29 percent of total industry sales.

In 1977 total industry sales were approximately \$60 million and the market was highly concentrated with the four largest sellers accounting for approximately 70 percent of the sales. The eight largest sellers accounted for approximately 89 percent of the total sales.

The Complaint alleges that Ohio Brass with 1977 sales of approximately \$5 million in underground power distribution equipment was the fifth leading seller. Its sales represented 9 percent of total industry sales.

The Complaint alleges that as a result of its acquisition of Ohio Brass, Hubbell's share of the underground power distribution equipment market in the United States

would increase to 38 percent, double that of the nearest competitor, and equal to the combined share of its three largest competitors.

Based on information gathered in the course of pretrial discovery, the Government contends the relevant market is slightly narrower than that alleged in the Complaint and consists of custom underground power distribution equipment. In 1977, Hubbell sold \$11 million worth of this equipment, or about 27.5 percent of total industry sales of \$40 million. Ohio Brass sold \$4.2 million in 1977, or about 10 percent of industry sales.

Hubbell is engaged in the manufacture and sale of many products in addition to underground power distribution equipment, including electrical wiring devices, industrial controls, lighting fixtures, insulated wire and cable, and voice and data signal processing equipment. Hubbell had total sales in 1977 of \$211 million. Its total assets were valued at \$139.3 million in 1976.

Ohio Brass also manufactures and sells many products in addition to underground power distribution equipment, including high voltage porcelain insulators, surge arresters, apparatus bushings, overhead line material, current collectors, rail bonds, switch lubricants, and bronze valves. In 1977 Ohio Brass had total sales of \$80 million, and its assets were valued at \$36 million.

On the same day that the Complaint was filed, August 25, 1978, the acquisition of Ohio Brass by Hubbell was consummated. On August 28, 1978, a Hold Separate Order, previously stipulated to by the parties was entered. This Order requires Hubbell to maintain its underground power distribution equipment operation separate and distinct from that of Ohio Brass and to take such reasonable action as may be necessary to maintain the economic well being and viability of the respective operations.

III

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The Government 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 proposed Judgment provides that there has been no admission by any party with respect to any issue of fact or law. Under Section 2(e) of the Antitrust Procedures and Penalties Act, entry of the Judgment is conditioned upon a determination by the Court that entry of the Judgment will be in the public interest.

The proposed Final Judgment requires Hubbell to divest, as an ongoing business, a specified list of assets including a manufacturing facility which has been heretofore used to manufacture and sell eleven specified underground power distribution products. The assets to be divested are used by Hubbell to manufacture and sell custom underground power distribution products which, based on information gathered during extensive pretrial discovery, the Government contends is the relevant product market in this litigation. The assets and products are specified in Schedule A to the proposed Final Judgment. These assets comprise approximately 50 percent of the assets and slightly less than 50 percent of the sales of the Ensign Electric Division of Hubbell. The divestiture must be to an eligible purchaser, one approved by the Government or the Court.

The Final Judgment provides that Hubbell, if requested by the prospective eligible purchaser, may divest less than all the assets specified in Schedule A if prior written approval has been obtained from the Government. Such divestiture must be as an ongoing business. If requested by a prospective eligible purchaser, Hubbell, if it chooses, may divest more than the listed assets.

Hubbell must make known, through periodic advertising and other appropriate means, the availability of the assets listed in Schedule A for sale as an ongoing business. At the option of the eligible purchaser, Hubbell must use its best efforts to provide it with such engineering, installation, marketing, and supply information as may be reasonably necessary to enable it to operate such assets as a viable ongoing business. Hubbell must also release from any employment contract any officer or employee whose primary responsibilities relate to the design, manufacture, marketing, distribution, sale, or repair of any of the products involved in the divestiture and who requests such a release in order to become associated with the eligible purchaser.

If Hubbell does not make the required divestiture within 12 months of the entry of the proposed Judgment, the Government may apply to the Court for the appointment of a trustee to effect the divestiture. The trustee shall serve at the cost and expense of Hubbell on such terms and conditions as the Court may set.

Under the proposed Judgment, the provisions of the Hold Separate Order dated August 28, 1978 shall remain in effect until the required divestiture is accomplished.

Hubbell is enjoined for a period of five years from the date of divestiture from using the name Ensign or Ensign Electric in conjunction with the manufacture, distribution or sale of any products for which assets were divested by order of the Judgment. Hubbell is further enjoined and restrained for a period of ten years from the date of the entry of the proposed Judgment from acquiring any of the assets or stock of, or from merging with any person engaged in whole or in part in the manufacture or sale of underground power distribution products without the prior written consent of the Government.

The proposed Judgment also provides means for determining Hubbell's compliance with its terms.

IV

THE COMPETITIVE EFFECTS OF THE
PROPOSED JUDGMENT

The proposed Final Judgment is designed to alleviate the alleged anticompetitive effects of the acquisition. The divestiture required by the proposed Judgment will create a new independent entity in the manufacture and sale of custom underground power distribution equipment products in the United States which will compete with Ohio Brass, deconcentrate the market, and enhance competition in the market generally, thus accomplishing the objectives of the lawsuit.

The provision in the proposed Judgment prohibiting Hubbell from acquiring another company in this market for ten years without the consent of the Government will prevent Hubbell from making any anticompetitive acquisitions in this industry for that period of time.

If the Division were certain that the new entrant would need the "Ensign" trademark to compete successfully in this market, it would have insisted that Hubbell divest it. It appears that trademarks are not so essential and that divestment would impose some cost on Hubbell for retooling and could create confusion as to product source as Hubbell could continue to use the mark on its standard product. The five-year prohibition against Hubbell's use of the mark in competing against the new entrant is in effect a hedge against the possibility that trademarks may constitute-- despite the Division's current belief to the contrary--a barrier of some significance to a new entrant in the custom underground power distribution market. To the extent that the "Ensign" trademark does confer upon its holder some marketing advantage, the new entrant will have one less obstacle to overcome.

The Government believes that the proposed Final Judgment prevents the occurrence of the anticompetitive effects that would arise from the challenged acquisition, and that therefore the disposition of this proceeding without further litigation is appropriate and in the public interest.

V

PROCEDURES AVAILABLE FOR MODIFICATION
OF THE PROPOSED JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person who believes that the proposed Final Judgment should be modified may submit written comments relating to the proposed Judgment to Ralph T. Giordano, Chief, New York Office, Antitrust Division, U.S. Department of Justice, Room 3630, 26 Federal Plaza, New York, New York 10278, within the 60-day period provided by the Act. These comments and the Government's responses to them will be filed with the Court and published in the Federal Register. All such comments will be given due consideration by the Government, which remains free to withdraw its consent to the proposed Judgment at any time prior to its entry. Additionally, the proposed Judgment provides that the Court retains jurisdiction over this action, and that the parties may apply to the Court for interpretation, modification, or enforcement of its provisions.

VI

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The alternative to the proposed Final Judgment considered by the Antitrust Division was a full trial on the merits and on relief. The Division considers the proposed Judgment to be of sufficient scope and effectiveness to make a trial unnecessary, since it provides appropriate relief against the violation alleged.

Hubbell's Ensign Electric Division operates out of two plants, one producing the custom designed underground power distribution products and the other producing standard shelf products. The latter were not in the relevant product market and thus not part of this case. Since it is feasible to divest only the custom portion of the business, this option seemed the most appropriate.

Since the proposed divestiture encompasses all the products in the relevant product market and will result in an entity larger than the Rectifier Division of Ohio Brass, the Government does not perceive any clear advantage to requiring the sale of both portions of the business. The relief set forth in the proposed Judgment achieves the objectives of this suit without the need for further litigation and thus the entry of the Judgment is in the public interest.

VI

REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

After entry of the proposed Final Judgment, any potential private plaintiff that might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal or equitable relief that it may have had if the Final Judgment had not been entered. Entry of the proposed Judgment in this proceeding will neither impair nor assist the bringing of any such private actions. Under Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Judgment would have no prima facie effect in any such lawsuit.

VII

OTHER MATERIALS

No materials or documents were considered determinative by the Government in formulating the proposed Final

Judgment. Consequently, none if being filed pursuant to
Section 2(b) of the Antitrust Procedures and Penalties Act
(15 U.S.C. § 16(b)).

Dated: 1981
New York, New York

Respectfully submitted,

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