

1 GARY R. SPRATLING
2 BERNARD H. MEYERS
3 Antitrust Division
4 Department of Justice
5 450 Golden Gate Avenue
6 Box 36046, Room 16216C
7 San Francisco, California 94102
8 Telephone: (415) 556-6300

9 Attorneys for the United States

10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF WASHINGTON

12 UNITED STATES OF AMERICA,
13 Plaintiff,

14 v.

15 JOHN BARTH, INC.;
16 JOHN I. HAAS, INC.;
17 LUPOFRESH, INC.;
18 S. S. STEINER, INC.; and
19 VON HORST COMPANY - YAKIMA,
20 Defendants.

C-84-505-JLQ

COMPETITIVE IMPACT
STATEMENT

Filed: March 4, 1985

21 Pursuant to Section 2(b) of the Antitrust Procedures and
22 Penalties Act, 15 U.S.C. § 16(b)-(h), the United States submits
23 this Competitive Impact Statement relating to the proposed Final
24 Judgment submitted for entry in this civil antitrust proceeding.

25 I

26 NATURE AND PURPOSE OF THE PROCEEDING

On July 23, 1984, the United States filed a civil antitrust
Complaint alleging that five hop merchants conspired to restrain
competition in the sale of hops, hop products, and hop services to

1 United States brewers in violation of Section 1 of the Sherman
2 Act, 15 U.S.C. § 1.

3 The Complaint alleged that, beginning in 1976 or earlier, and
4 continuing up to and including the date when the Complaint was
5 filed, the defendants fixed prices and price ranges at which hops,
6 hop products, and hop services were quoted and sold to United
7 States brewers. The effects of the conspiracy were alleged to
8 include the fixing, raising, and stabilizing of prices for hops,
9 hop products, and hop services, and the denial to United States
10 brewers of free and open competition in the purchase of these
11 products and services. The Complaint asks the Court to find that
12 the defendants have violated Section 1 of the Sherman Act and
13 requests the Court to enjoin the continuance of the conspiracy.

14 II

15 PRACTICES GIVING RISE TO THE ALLEGED VIOLATION

16 The Government contends and was prepared to show at trial:

17 1. Hops are agricultural products used almost exclusively
18 to impart a flavor and aroma to beer, ale, and similar beverages.
19 In the United States, hops are grown commercially principally in
20 the Yakima Valley region of the State of Washington and to a
21 lesser extent in other parts of the Pacific Northwest and Northern
22 California.

23 2. Hop products are hops that have been converted into
24 pellets or extract, both of which are concentrated forms of hops
25 used for the same purposes as hops. Hop services include the
26 pelletization and extraction of hops and the storage of hops and

COMPETITIVE IMPACT STATEMENT - PAGE 2

1 hop products.

2 3. Each of the defendants is known in the industry as a
3 hop merchant, dealer, or handler and is engaged in the business of
4 purchasing hops from hop growers and selling hops, hop products,
5 and hop services to brewers.

6 4. John Barth, Inc. is a corporation organized and
7 existing under the laws of the State of New Jersey, with its
8 principal place of business located in New York, New York.

9 5. John I. Haas, Inc. is a corporation organized and
10 existing under the laws of the State of Delaware, with its
11 principal place of business located in Washington, D. C.

12 6. Lupofresh, Inc. is a corporation organized and existing
13 under the laws of the State of New York, with its principal place
14 of business located in New York, New York.

15 7. S. S. Steiner, Inc. is a corporation organized and
16 existing under the laws of the State of New York, with its
17 principal place of business located in New York, New York.

18 8. Von Horst Company - Yakima is a limited partnership
19 organized and existing under the laws of the State of Washington,
20 with its principal place of business located in Yakima, Washington.

21 9. The defendants collectively account for almost all of
22 the hops, hop products, and hop services sold by American hop
23 dealers. In 1981, their combined annual gross revenues were
24 approximately \$200 million.

25 10. Beginning in 1976 or earlier, the defendants and
26 co-conspirators agreed among themselves upon prices or price

COMPETITIVE IMPACT STATEMENT - PAGE 3

1 ranges to be utilized in many of their quotations; proposed and
2 submitted bids at prices or within price ranges agreed upon among
3 themselves; agreed among themselves upon the terms and conditions
4 of sales to brewers; and sold to brewers hops, hop products, and
5 hop services at prices or within price ranges agreed upon among
6 themselves. Not all of the bids or sales by the defendants were
7 involved in the conspiracy, nor was each defendant a party to
8 every fixed bid or sale.

9 11. The conspiracy deprived United States brewers of the
10 benefits of free and open competition in many of their purchases
11 of hops, hop products, and hop services, and stabilized prices for
12 hops, hop products, and hop services at non-competitive levels.

13 III

14 EXPLANATION OF THE PROPOSED FINAL JUDGMENT

15 The United States and the defendants have stipulated that the
16 Court may enter the proposed Final Judgment after compliance with
17 the Antitrust Procedures and Penalties Act, 15 U.S.C.

18 § 16(b)-(h). The proposed Final Judgment provides that its entry
19 does not constitute any evidence against or admission by any party
20 with respect to any issue of fact or law.

21 Under the provisions of Section 2(e) of the Antitrust
22 Procedures and Penalties Act, 15 U.S.C. § 16(e), the proposed
23 Final Judgment may not be entered unless the Court finds that
24 entry is in the public interest. Section XIII of the proposed
25 Final Judgment sets forth such a finding.
26

1 The proposed Final Judgment is intended to ensure that each
2 of the defendants do not enter into any agreement or engage in any
3 concert of action with any other hop merchant which has the
4 purpose or effect of fixing, maintaining, or establishing any
5 price, price range, or other term or condition for the sale of
6 hops, hop products, or hop services to any United States brewer.

7 A. Prohibitions and Obligations

8 Section IV of the proposed Final Judgment enjoins the
9 defendants from (1) entering into, furthering, or continuing any
10 agreement, understanding, or concert of action with any other hop
11 merchant which has the purpose or effect of fixing, maintaining,
12 or establishing any price, price range, or other term or condition
13 for the sale of hops, hop products, or hop services to any United
14 States brewer; (2) communicating with any other hop merchant or
15 group of hop merchants to exchange information concerning (a)
16 current or future prices, offers, or counteroffers for the sale of
17 hops, hop products, or hop services, (b) strategy, timing or the
18 conduct of negotiations for current or future sales of hops, hop
19 products, or hop services, or (c) the quantity of hops or hop
20 products, or the amount or extent of hop services, sold to United
21 States brewers; and (3) attending or participating in any meeting
22 or discussion with any other hop merchant or group of hop
23 merchants where the defendant knows or has been advised that any
24 hop merchant will discuss any subject listed in (1) or (2) above.

25 Section V of the proposed Final Judgment recognizes the
26 legality, and in some cases necessity, of certain kinds of

1 communications, transactions, and other activities that are
2 characteristic of the hop industry, that do not impede
3 competition, that are in the public interest, and that do not
4 detract from the Final Judgment's overall objective of restoring
5 price competition in the sale of hops, hop products, and hop
6 services to United States brewers. Accordingly, those
7 communications, transactions, and activities are not prohibited by
8 the Final Judgment, except to the extent they are undertaken for
9 the purpose of circumventing the prohibitions of Section IV of the
10 proposed Final Judgment described above.

11 Section VI of the proposed Final Judgment requires each
12 defendant to file annually with the plaintiff for a period of ten
13 years an affidavit that identifies each meeting that the defendant
14 attended at which any subject listed in Section IV of the proposed
15 Final Judgment was discussed.

16 Section VII of the proposed Final Judgment requires each
17 defendant to serve a copy of the Final Judgment upon each of its
18 current and future officers, directors, agents, and employees
19 responsible for making pricing decisions for the sale of hops, hop
20 products, or hop services to United States brewers.

21 B. Scope of the Proposed Final Judgment

22 Section XII of the proposed Final Judgment provides that the
23 Final Judgment shall remain in effect for 10 years.

24 Section III of the proposed Final Judgment provides that the
25 Final Judgment shall apply to the defendants, their successors and
26 assigns, and to their respective subsidiaries, officers,

1 directors, agents, and employees, and to all other persons in
2 active concert or participation with any of them who shall have
3 received actual notice of the Final Judgment.

4 Section VIII of the proposed Final Judgment requires that
5 each defendant shall require any purchaser of all, or
6 substantially all, of its business, to agree to be bound by the
7 provisions of the Final Judgment.

8 Section XI of the proposed Final Judgment requires each
9 defendant to maintain for the effective period of the Final
10 Judgment an agent for service of process in connection with any
11 proceedings relating to the construction, modification, or
12 enforcement of the Final Judgment.

13 C. Effect of the Proposed Judgment on Competition

14 The relief in the proposed Final Judgment is designed to
15 prevent recurrence of the activities alleged in the Complaint and
16 to ensure that United States brewers obtain the benefits of free
17 and open competition in the purchase of hops, hop products, and
18 hop services.

19 In order to determine compliance with the terms of the Final
20 Judgment, Section IX provides that, upon sixty days' notice, the
21 Department of Justice shall be given access to the records of each
22 defendant relating to matters contained in the Final Judgment and
23 permitted to interview any officers, employees, and agents of each
24 defendant. Section IX also provides that, upon written request,
25 the Department of Justice may require each defendant to submit
26 written reports about any matters relating to the Final Judgment.

IV

ALTERNATIVE TO THE PROPOSED FINAL JUDGMENT

The alternative to the proposed Final Judgment would be a full trial of the case. In the view of the Department of Justice, such a trial would involve substantial cost to the United States and is not warranted since the proposed Final Judgment provides all the relief that the United States sought in its Complaint.

V

REMEDIES AVAILABLE TO POTENTIAL
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 suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the judgment has no prima facie effect in any subsequent lawsuits that may be brought against any defendant.

VI

PROCEDURES AVAILABLE FOR MODIFICATION
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 Gary R. Spratling, Chief,

1 San Francisco Field Office, Antitrust Division, U.S. Department of
2 Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, CA
3 94102, within the 60-day period provided by the Act. These
4 comments, and the Department's responses, will be filed with the
5 Court and published in the Federal Register. All comments will be
6 given due consideration by the Department of Justice, which
7 remains free to withdraw its consent to the proposed Final
8 Judgment at any time prior to its entry if it should determine
9 that some modification of the Final Judgment is necessary to
10 uphold the public interest.

11
12 Section X of the Final Judgment provides that the Court will
13 retain jurisdiction over the action, and that the parties may
14 apply to the Court for such orders as may be necessary or
15 appropriate for the modification or enforcement of the Final
16 Judgment.

17 VII

18 DETERMINATIVE MATERIALS AND DOCUMENTS

19 No materials and documents of the type described in Section
20 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C.

21 ///

22 ///

23 ///

24 ///

25 ///

26
COMPETITIVE IMPACT STATEMENT - PAGE 9

1 § 16(b), were considered in formulating the proposed Final
2 Judgment. Consequently, none are filed herewith.

3 Respectfully submitted,

4
5 GARY R. SPRATLING

6
7 Bernard H. Meyers
8 BERNARD H. MEYERS

9
10 James E. Figenshaw
JAMES E. FIGENSHAW

11 Attorneys, U.S. Department of
12 Justice