

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

Plaintiff

v.

CHELSEA INDUSTRIES, INC.; and  
AVON TAPE INC.

Defendants.

Civil Action No.  
78-3224-C

Filed: November 30, 1978

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

On December 14, 1978, the United States filed a civil antitrust complaint under Section 4 of the Sherman Act (15 U.S.C. § 4) to enjoin the above named corporate defendants from continuing violations of Section 1 of the Sherman Act (15 U.S.C. § 1).

The Complaint alleges that beginning in 1967 and continuing thereafter until at least April 1, 1978, the defendants engaged in a combination and conspiracy to restrain interstate commerce by fixing, maintaining and stabilizing the prices of pressure sensitive tape products sold to the shoe industry in the United States.

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

Proceedings in this case were stayed pending disposition of a companion criminal prosecution before Judge Joseph Tauro. The criminal prosecution was initiated by a grand jury indictment returned on December 14, 1978, charging the same corporate defendants with a criminal violation of the Sherman Act arising out of the same conspiracy alleged in the Complaint. On February 1, 1979, pleas of nolo contendere were entered by both defendants before Judge David Mazzone. Chelsea Industries, Inc. was fined \$210,000.00; Avon Tape Inc. was fined \$45,000.00.

## II

### THE TERMS OF THE ALLEGED CONSPIRACY

The pressure sensitive tape products involved in this case are a component used in the manufacture of shoes. These products have adhesive qualities so that the finished tape product can be affixed to different parts of a shoe to provide reinforcement. Pressure sensitive tape products are primarily purchased by shoe manufacturers, but are also purchased by distributors for resale to shoe manufacturers or other persons.

The defendants are the principal manufacturers and sellers in the United States of pressure sensitive tape sold to the shoe industry. During the period of time covered by the Complaint, the defendants sold approximately \$30 million of pressure sensitive tape products to the shoe industry pursuant to the conspiracy alleged in the Complaint. During 1977 the defendants' domestic sales of pressure sensitive tape products were approximately \$5 million which represented 75-90 percent of the total sales of these products in the United States.



The Complaint alleges that the defendants combined and conspired to restrain interstate commerce from 1967 until at least April 1, 1978 in violation of Section 1 of the Sherman Act by fixing, maintaining and stabilizing the prices of pressure sensitive tape products sold to the shoe industry. The defendants effectuated their unlawful conduct by conspiring to: increase the prices of pressure sensitive tape products; publish, disseminate, and exchange price announcements and price lists in accordance with and to implement agreements reached; solicit and encourage the participation of another competitor in their price-fixing activities; telephone, meet and otherwise contact each other to discuss, agree, coordinate, police and secure adherence to agreements reached; and exchange price information concerning the sale price of pressure sensitive tape products to specific customer accounts in order to maintain a fixed range of prices below which neither defendant would sell its products. According to the Complaint, the conspiracy among the defendants has had the effect of increasing the prices of pressure sensitive tape products and eliminating competition in the sale of said products between the defendants throughout the United States.

### III

#### EXPLANATION OF THE PROPOSED JUDGMENT

The United States 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 Final Judgment between the parties provides that there is no admission by any party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, entry of the

proposed Final Judgment is conditioned upon a determination by the Court that the proposed Final Judgment is in the public interest.

The proposed Final Judgment enjoins and restrains the defendants from directly or indirectly entering into or adhering to, maintaining or claiming any rights under any contract, agreement, understanding, plan, program, combination or conspiracy: to fix, maintain or stabilize the prices or any other term or condition of sale for pressure sensitive tape products; or to furnish or request from any other manufacturer of pressure sensitive tape products any information concerning prices, specific accounts or any other term or condition of sale for pressure sensitive tape products.

The Final Judgment also enjoins and restrains each defendant from proposing, requiring, coercing or attempting to require or coerce any manufacturer of pressure sensitive tape products or other person to adopt, establish or adhere to any price or other term or condition of sale for pressure sensitive tape products; or to communicate or exchange with, or request from any other manufacturer of pressure sensitive tape products any information concerning any price or other term or condition of sale for pressure sensitive tape products now or in the future, or any price or discount announcement, list, schedule or book, or any revision or modification thereto.

The only exception to the broad prohibitions of these provisions in the Final Judgment is found in Section VI which allows each defendant to enter into a bona fide contract or agreement to purchase, sell or furnish pressure sensitive tape products to another manufacturer of the same products.



In addition to the foregoing prohibitions, the Final Judgment orders and directs each defendant to take certain affirmative steps to insure compliance with its provisions. Each defendant is required to provide a copy of the Final Judgment to each of its officers and employees who sell, have responsibility for or authority over the pricing or sale of pressure sensitive tape products and to obtain a written receipt from each person receiving a copy of the Final Judgment. In addition, each officer and employee who receives a copy of the Final Judgment must be advised of his or her obligations under the Final Judgment and of the criminal penalties for violation thereof. Each defendant is required to review with each person receiving a copy of the Final Judgment the terms thereof and the requirement to comply therewith at least once each year for five years after the entry of the Final Judgment.

In addition, each defendant is required within sixty days following the entry of the Final Judgment to independently review its prices, discounts and terms and conditions of sale for pressure sensitive tape products on the basis of its individual cost figures, individual judgment and other lawful considerations; to adopt and publish domestic prices, discounts and terms and conditions of sale for pressure sensitive tape products on the basis of such independent review; and to submit an affidavit to the Court and the United States certifying that such new prices, discounts and terms and conditions of sale were arrived at individually and independently. Each defendant is also required for a period of five years to have an officer with responsibility for or authority over the establishment of prices for pressure

sensitive tape products certify by affidavit that every succeeding change in its published prices, discounts or terms and conditions of sale for said products was arrived at individually and independently and was not the result of any agreement or understanding with a competitor.

Each defendant is required to submit an affidavit to the United States within sixty days after the entry of the Final Judgment setting forth the manner in which it has complied with these provisions; and for a period of five years is required to file with the Court and the United States a written statement signed by an officer setting forth the steps taken during the prior year to assure compliance with the terms of the Final Judgment.

The Department of Justice is given access under the proposed Final Judgment to the files and records of the defendant corporations, subject to reasonable notice requirements, in order to examine such records to determine compliance or non-compliance with the Final Judgment. The Department is also granted access to interview officers, directors, agents or employees of the defendants to determine whether the defendants and their representatives are complying with the Final Judgment. Finally, the defendants, upon the written request of the Department of Justice, shall submit such reports in writing, under oath if requested, with respect to any of the matters contained in the Final Judgment.

#### 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, as well as costs and reasonable attorney's fees. The entry of the proposed Final Judgment will not have any adverse effect on the right of any potential private plaintiff who was a direct purchaser of pressure sensitive tape products from the defendants and claims to have been damaged by the alleged violation. Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977). These potential private plaintiffs may sue for monetary damages or any other legal or equitable remedies, provided that such potential claim is timely under Sections 4 and 5(i) of the Clayton Act (15 U.S.C. §§ 15, 16(i)). However, this Final Judgment may not be used as prima facie evidence in private litigation pursuant to Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)).

## 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 Anthony V. Nanni, 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 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 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. The Final Judgment is to remain in effect for a period of ten (10) years from the date of its entry.

## 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. The proposed Final Judgment provides essentially all the equitable relief requested in the Complaint. The Final Judgment absolutely prohibits the continuation or renewal of the price-fixing activities of the defendants. It severely limits the circumstances in which representatives of the defendants can communicate with each other or other competitors concerning prices or price related matters, and the affirmative action required by the defendants is designed not only to prevent and discourage such activity in the future, but to effectively restore competition to this industry. For these reasons, in addition to the substantial savings of public funds and judicial time that would result from the acceptance of this proposed Final Judgment, it is the view of the United States that the proposed Final Judgment is in the public interest.

## VII

### DETERMINATIVE MATERIALS

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act [15 U.S.C. § 16(b)] were considered in formulating this proposed Final Judgment. Consequently, none are filed herewith.

Dated: November 30, 1979

  
ROBERT E. BLOCH  
Attorney, Department of Justice