

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil Action No. 3-80-596
v.)	
)	COMPETITIVE IMPACT STATEMENT
BEATRICE FOODS CO. and)	
)	Filed: January 11, 1982
FIBERITE CORPORATION,)	
)	
Defendants.)	

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. §§ 16(b)-(h) (1974), files 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 October 28, 1980, the United States filed a civil anti-trust complaint under Section 15 of the Clayton Act, 15 U.S.C. § 25, challenging the acquisition of Fiberite Corporation ("Fiberite") by Beatrice Foods Co. ("Beatrice") as a violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The complaint alleges that the effect of the acquisition may be substantially to lessen competition or to tend to create a monopoly in custom compounded reinforced thermoplastics molding compounds ("custom compounded RTP"). The complaint alleges that as a result of this violation competition between Beatrice and Fiberite in custom compounded RTP was eliminated, competition in the custom compounded RTP market in general may be substantially lessened, and concentration was substantially increased in that market. The complaint sought to have Beatrice divest itself

of all of the assets and stock of Fiberite and for such other further relief deemed proper and just by the Court.

Entry of the proposed Final Judgment will terminate this litigation. The Court will retain jurisdiction to construe, modify, or enforce the proposed Final Judgment.

II.

DESCRIPTION OF THE MARKET AND FIRMS INVOLVED

The market alleged in the complaint is custom compounded reinforced thermoplastics molding compounds. At trial, the Government would have made the following contentions:

A. Thermoplastics are a group of plastic resins which may be repeatedly softened and hardened by heating and cooling. Reinforced thermoplastics are thermoplastic resins which have been combined with a reinforcing agent such as glass or carbon fiber to improve one or more of a resin's properties or physical characteristics. Other ingredients such as fillers, lubricants and flame retardants in addition to the reinforcing agent may also be combined with a thermoplastic resin to further improve its qualities. Reinforced thermoplastics are sold in the form of pellets or powder as raw materials to industrial processors for molding and fabrication into a wide range of industrial and consumer products.

B. Custom compounded reinforced thermoplastics are reinforced thermoplastics selected, designed and manufactured to fill the special needs of an individual customer's application, generally in low-volume orders. Custom compounders of reinforced thermoplastics possess special know-how and technical expertise which are used to develop and maintain a broad range of proprietary formulations and recipes to meet customers' needs. Custom compounded reinforced thermoplastics are

distinguishable from commodity reinforced thermoplastics molding compounds in that the latter are manufactured in high-volume quantities for sale from inventory to meet a general demand.

C. Thermoplastics are distinguished from the group of plastic resins known as thermosets. Thermoset resins can be reinforced and custom compounded, but the molecular structure of thermosets is such that once the thermoset is hardened, it cannot be softened by heat.

D. The market for custom compounded RTP is highly concentrated with high entry barriers. The four principal domestic manufacturers accounted for approximately 89 percent of the market in 1979.

E. Beatrice, by virtue of its 1976 acquisition of LNP Corporation, was, prior to the Fiberite acquisition, the leading firm in the United States in the manufacture and sale of custom compounded RTP with about 50 percent of the market. Fiberite, prior to the time it was acquired, was the leading firm in the United States in the manufacture and sale of custom compounded reinforced thermosets. In 1975 Fiberite entered the custom compounded RTP business achieving an 8 percent market share (ranking fourth) by 1979, combining its own formulation and manufacturing expertise with the production facilities of Miller Waste Mills, Inc. ("Miller Waste Mills"), an affiliated company. Miller Waste Mills was not sold to Beatrice but has continued to manufacture RTP for Fiberite.

III.

THE ACQUISITION AND ALLEGED VIOLATION

The complaint alleges that Fiberite was recognized by Beatrice as a formidable and rapidly growing competitor in

custom compounded RTP and that its acquisition by Beatrice would tend substantially to lessen competition or tend to create a monopoly in the United States market for those products. The complaint did not allege that Fiberite and Beatrice were actual or potential competitors in the manufacture or sale of thermosets; the alleged impact on competition was limited to reinforced thermoplastics.

IV.

THE PROPOSED FINAL JUDGMENT AND ITS ANTICIPATED EFFECTS ON COMPETITION

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, 15 U.S.C. §§ 16(b)-(h). The proposed Final Judgment constitutes no admission by either party as to any issue of fact or law. Under the provisions 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 contains five principal forms of relief. First, the defendant Beatrice will be required to permanently divest the thermoplastics compounding business of Fiberite by selling it to Miller Waste Mills, Fiberite's former affiliate which presently produces and has in the past produced Fiberite's thermoplastics compounds. Second, the defendant Beatrice is enjoined from acquiring any other producer and seller of reinforced thermoplastics compounds for ten years from the date the proposed Final Judgment is entered. Third, the defendant Fiberite is

enjoined for ten years from reentering the thermoplastics compounding business. Fourth, Beatrice is required to give public notice of the transfer of business to Miller Waste Mills. Fifth, Beatrice and Fiberite officers and employees responsible for or participating in Beatrice's thermoplastics compounding business are prohibited from influencing or communicating with Miller Waste Mills.

Within ten days of the entry of the proposed Final Judgment Beatrice will transfer the Fiberite thermoplastics compounding business to Miller Waste Mills pursuant to the Agreement between Beatrice, Fiberite and Miller Waste Mills that has been filed with the Court and is available to the public. The Agreement requires Beatrice to transfer the RTP trade secrets, formulations, know-how, customer lists and goodwill of Fiberite to Miller Waste Mills. Fiberite's RTP inventories and contracts are assigned to Miller Waste Mills. Key sales, scientific and marketing personnel will also transfer to the new entity. Although Fiberite retains primary rights to the tradename "Fiberite," Miller Waste Mills is granted its use on a temporary, limited basis.

The Agreement between Beatrice, Fiberite and Miller Waste Mills contains a covenant by Fiberite not to solicit or accept RTP orders for ten years and a covenant by Beatrice not to compete for 18 months on 10 accounts of Fiberite which are part of Fiberite's thermoplastics compounding business being transferred to Miller Waste Mills. Fiberite is currently engaged in significant research and development efforts aimed at producing new products for those ten accounts. Plaintiff believes that such covenants are reasonable under the circumstances here presented and useful to effectuate the spin-off to Miller Waste Mills.

The provisions of the proposed Final Judgment apply to Beatrice and Fiberite and each of its directors, officers,, employees, agents, subsidiaries, affiliates, successors and assignees, and to all other persons in active concert or participation with any of them who receive actual notice of the proposed Final Judgment by personal service or otherwise.

The effect of the divestiture would be to allow Beatrice to retain the thermoset business of Fiberite and to compete in the RTP business through its LNP divisions. Miller Waste Mills would become a competitor of Beatrice in the production and sale of RTP, in effect, restoring the competition that previously existed between Beatrice and Fiberite.

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 the person has suffered, as well as costs and a reasonable attorney's fee. Entry of the proposed Final Judgment will neither impair nor assist private antitrust damage actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against the defendants.

VI.

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment is subject to a Stipulation between the Government and the defendants which provides

that the Government may withdraw its consent to the proposed Judgment any time before the Court has found that entry of the proposed Judgment is in the public interest. By its terms, the proposed Judgment provides for the Court's retention of jurisdiction of this action in order to permit any of the parties to apply to the Court for such orders as may be necessary for the modification of the Final Judgment.

As provided by Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. §§ 16(b)-(h), any person wishing to comment upon the proposed Judgment may, for the statutory comment period, submit written comments to the United States Department of Justice, Attention: John W. Poole, Jr., Chief, Special Litigation Section, Antitrust Division, Department of Justice, Washington, D.C. 20530. Such comments and the Government's response to them will be filed with the Court and published in the Federal Register. The Government will evaluate all such comments to determine whether there is any reason for withdrawal of its consent to the proposed Final Judgment.

VII.

ALTERNATIVE TO THE PROPOSED FINAL JUDGMENT

The alternative to the proposed Final Judgment considered by the United States was a trial on the merits seeking total divestiture of Fiberite. While the complaint sought total divestiture of Fiberite to restore the competition lost due to the merger, the United States considers the proposed Final Judgment coupled with the defendants' negotiated Agreement of divestiture to be a good, if not a better, alternative.

The proposed Judgment would achieve the objective of the lawsuit, restoring competition in the custom compounded reinforced thermoplastics industry. The Agreement between Beatrice, Fiberite and Miller Waste Mills provides for the transfer of Fiberite's personnel who are experienced in the custom compounding of RTP. It thereby reunites Fiberite's technical expertise with its manufacturing arm and will, to a considerable extent, restore the management and operating team which made Fiberite an effective new entrant into custom compounded RTP. A purchaser of all of Fiberite would not necessarily have access to Miller Waste Mills' RTP production facilities and might elect to close or de-emphasize Fiberite's RTP business. Accordingly, plaintiff believes that the divestiture here accomplished would restore the competition lost due to this merger in a manner as satisfactory, or in a manner superior to, the relief requested in the complaint.

Under the circumstances, the United States believes that entry of the proposed Final Judgment is in the public interest.

VIII.

DETERMINATIVE MATERIALS AND DOCUMENTS

Plaintiff considers the Agreement between Beatrice, Fiberite and Miller Waste Mills and the public notice of the divestiture to be determinative documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), and they have been filed with the District Court for the District of Minnesota. A

copy of each may be requested from the Legal Procedure Unit,
Room 7416, Department of Justice, Washington, D.C. 20530.

Respectfully submitted,



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Dated: JAN 8 1982