

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
) Civil Action No.: 80-1563-C
 v.)
)
 AMTEL, INC.;)
 ELCO INDUSTRIES, INC.;)
 NL INDUSTRIES, INC.;)
 REED & PRINCE MANUFACTURING)
 COMPANY; and)
 TEXTRON INC.,)
)
 Defendants.)

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (the "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 July 15, 1980, 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 or renewing violations of Section 1 of the Sherman Act (15 U.S.C. § 1).

The complaint alleges that beginning as early as 1957 and continuing at least until sometime in 1977, the defendants engaged in a conspiracy to restrain interstate commerce by fixing the prices of standard screws sold wholesale through various types of distributors. The complaint seeks a judgment by the court that the defendants engaged in a combination and

conspiracy in restraint of trade in violation of Section 1 of the Sherman Act and an order enjoining them from continuing or resuming such activities in the future.

Proceedings in this case were stayed pending disposition of a companion criminal prosecution, United States v. Amtel, Inc., et al., Criminal No. 80-244-C (D. Mass.). The indictment, filed on July 15, 1980, charged the above-named defendant corporations and three individuals with a criminal violation of the Sherman Act arising out of the same conspiracy alleged in the complaint. The criminal case has been concluded. Four of the corporations (Amtel, Inc.; NL Industries, Inc.; Reed & Prince Manufacturing Company; and Textron Inc.) pleaded nolo contendere and were fined a total of \$700,000. Two of the individuals also pleaded nolo contendere. Each received a one year suspended sentence and one year probation. They were fined a total of \$90,000. The remaining corporation and individual defendant were found not guilty after trial.

II

THE TERMS OF THE ALLEGED CONSPIRACY

The conspiracy revolved around the activities of a trade association known as the United States Wood Screw Service Bureau. Each defendant was a member of this trade association and each sold standard screws wholesale through various types of distributors. The complaint alleges that the defendants conspired to fix the prices wholesalers were charged for such screws.

As stated in the complaint, the defendants, for the purpose of forming and effectuating the conspiracy, made telephone calls and held meetings through which they: (1) agreed to increase the published prices of standard screws

sold to distributors; (2) agreed to the "base" or published discount level and discussed additional discounts for such screws; and (3) policed adherence to their agreements. The complaint further alleges that in order to effectuate their conspiracy, the defendants published prices and discounts in accordance with agreements reached and exchanged with one another proposed and published prices and discounts. According to the complaint, the conspiracy caused prices to be raised, maintained and stabilized at non-competitive levels, restrained competition between the defendants in the sale of standard screws, and deprived purchasers of such screws of free and open competition. During the period of time covered by the complaint, the total amount of such sales by the defendants exceeded \$1 billion.

III

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and all the defendants have stipulated that the court may enter the proposed Final Judgment at any time after compliance with the Act. The Final Judgment 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 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.

Standard screws are defined in the proposed Final Judgment as externally threaded fasteners produced to a standardized published specification and sold wholesale through various types of distributors including independent wholesalers, groups of wholesale distributors, and buying organizations. This definition is consistent with the focus of the investigation leading to the criminal indictment and the filing of the complaint.

The proposed Final Judgment enjoins the defendants from entering into, adhering to, maintaining or furthering an agreement with any other person who sells or manufactures standard screws to raise, fix, stabilize, maintain or adhere to prices, discounts or other terms or conditions for the sale of standard screws.

The proposed Final Judgment also enjoins the defendants from communicating with, exchanging with, or requesting from any other person who sells to distributors or manufactures standard screws any information about (a) past, present, future or proposed price, discount or other term or condition for sale of standard screws or (b) the consideration of whether to change an actual or proposed price, discount or other term or condition for the sale of standard screws. Communications concerning manufacturing or production costs, unless necessary for the licensing of a proprietary product, are similarly enjoined. This restriction on communications does not apply in two situations. It does not apply to public communications which have not been made directly to anyone engaged in the manufacture or sale of standard screws. Nor does it apply to any necessary communication made in connection with a bona fide contemplated or actual purchase or sales transaction.

The proposed Final Judgment requires each defendant to advise those employees with either sales management or pricing responsibility for standard screws of the obligations imposed upon them by the judgment and the Sherman Act. Each defendant must furnish each such employee with a copy of the Final Judgment within 60 days after the judgment is entered. In addition, every employee who assumes a position with sales management or pricing responsibility must receive a copy of the judgment within 60 days after assuming that position. Each defendant is also required to distribute at least every

two years to each employee described above, a copy of the judgment or a summary of it, along with a directive describing the defendant's policy requiring compliance with the judgment and the Sherman Act. The directive must warn employees that noncompliance with the Final Judgment or the Sherman Act will result in disciplinary action, including possible dismissal. The directive shall also notify employees that legal advisors are available to confer with them on any compliance question. Each affected employee must submit a statement to his employer acknowledging that he has received and read the judgment (or summary) and the directive, that he has been advised and understands that noncompliance will result in disciplinary action, which may include dismissal, and that he understands that noncompliance with the judgment could lead to a conviction for contempt of court and result in a fine or imprisonment or both.

Finally, the proposed Final Judgment provides that each defendant require, as a condition of the sale or other disposition of all or substantially all, of the total assets of its standard screw business that the acquiring party agree to be bound by the provisions of the Final Judgment. The acquiring party must file with the court and serve on the United States its consent to be bound by the judgment.

In order to determine compliance with the Final Judgment, the Department of Justice is given access to the files and records of the defendants, subject to reasonable notice requirements, and may for the same purpose interview defendants' officers, directors, agents or employees. Upon the written request of the Department of Justice, defendants shall submit written reports with respect to any of the matters contained in the Final Judgment.

The Final Judgment is to be in effect for ten years from its date of entry.

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 neither impair nor assist any person in prosecuting any private antitrust claim arising out of the conspiracy charged in the complaint. Under Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), this Final Judgment may not be used as prima facie evidence in legal proceedings against the defendants.

Shortly after the commencement of this case and the criminal case by the United States, a number of private actions were filed in various federal district courts throughout the United States seeking treble damages. The cases were consolidated in the District of Massachusetts and are now before Chief Judge Andrew A. Caffrey.

V

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

As provided by the 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 department'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.

VI

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment will dispose of the United States' claim for injunctive relief against the defendants. The only alternative available to the Department of Justice is a trial of this case on the merits. Such a trial would require a substantial expenditure of public funds and judicial time. Since the relief obtained in the proposed Final Judgment is substantially similar to the relief the Department of Justice would expect to obtain after winning a trial on the merits, the United States believes that entry of the proposed Final Judgment is in the public interest.

VII

DETERMINATIVE MATERIALS AND DOCUMENTS

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 the Final Judgment.

Respectfully submitted,

Steven M. Woghin
STEVEN M. WOGHIN

Attorney, U.S. Department of Justice
Antitrust Division, Room 3256
10th & Constitution Avenue, N.W.
Washington, D.C. 20530
202/633-2417