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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,)
11)
12 Plaintiff,)
13 v.) Civil Action No. 71-1522-ALS
14 R&G SLOANE MANUFACTURING) PROPOSED CONSENT JUDGMENT:
15 COMPANY, INC.;)
16 THE SUSQUEHANNA CORPORATION;) COMPETITIVE IMPACT STATEMENT
17 CELANESE CORPORATION;)
18 BORG-WARNER CORPORATION; and)
19 PLASTILINE, INCORPORATED,)
20 Defendants.)

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

26 NATURE OF CASE

27 On June 29, 1971, the Department of Justice filed a
28 civil antitrust suit alleging that R&G Sloane Manufacturing
29 Company, Inc., The Susquehanna Corporation, Celanese
30 Corporation, Borg-Warner Corporation, and Plastiline, Inc.
31 had combined and conspired to fix, maintain and stabilize
32 discounts and prices in connection with the sale of drainage,
waste or vent (DWV) plastic pipe fittings in violation of
Section 1 of the Sherman Act. It is estimated that during
the year preceding the filing of the suit the total dollar

1 volume of sales of DWV plastic pipe fittings in the United
2 States was approximately \$32,000,000, of which the defendants
3 accounted for a combined share of approximately 54 percent.

4 THE INDUSTRY

5 In the United States, DWV plastic pipe fittings are
6 generally made from one of two types of thermoplastics,
7 varying proportions of acrylonitrile, butadiene and styrene
8 monomers (ABS) and from polyvinyl chloride (PVC). DWV
9 plastic pipe fittings are used as a means of providing turns,
10 connections, branches, traps, splits and the like in drainage,
11 waste or vent systems in fixed residential, modular and
12 mobile homes and other structures. The principal types of
13 these fittings include adapters, bushings, flanges, couplings,
14 elbows, plugs, bends, tees, traps and Y's. In recent years
15 plastic pipe fittings have, to a substantial degree, replaced
16 fittings made of cast iron, steel, copper and other materials.
17 This may be attributed to the savings in product cost and in
18 labor due to the lightness of plastic as compared with metal.
19 Such fittings are sold to wholesalers for resale to plumbing
20 contractors and other end users. The DWV plastic pipe fitting
21 industry is comprised of two types of manufacturers, "full
22 line" and "short line". A "full line" manufacturer makes
23 most of the 500 to 600 types of fittings currently sold in
24 the United States. The defendants have been the leading
25 domestic full line manufacturers, with R&G Sloane making the
26 greatest number of different types of fittings. Various
27 other full line manufacturers traditionally purchased fittings
28 from Sloane or from each other to round out their lines.
29 "Short line" manufacturers produce only a limited selection
30 of fitting types, generally those which have the greatest
31 sales volume. The defendant Borg-Warner Corporation dis-

1 continued the manufacture and sale of DWV plastic pipe
2 fittings in March of 1971.

3 RESTRICTIVE PRACTICES ALLEGED

4 It was alleged that since as early as January 1966, the
5 defendants engaged in a combination and conspiracy in
6 restraint of interstate trade and commerce in DWV plastic
7 pipe fittings. As a result of this alleged combination and
8 conspiracy, prices and discounts on DWV plastic pipe fittings
9 sold by defendants were maintained and stabilized, and price
10 competition among the defendants in the sale of such fittings
11 was suppressed.

12 It was alleged in the complaint that the full-line
13 defendant companies have attempted to reduce the extent and
14 degree of discounting, and have attempted to discourage
15 efforts to match short-line prices by other full-line manu-
16 facturers. Thus customers of the defendants were deprived
17 of the opportunity to purchase DWV plastic fittings at
18 competitive prices and terms of sale.

19 PROPOSED JUDGMENT

20 The proposed consent judgment provides a combination of
21 measures to dispel the anticompetitive effects alleged in the
22 complaint. The defendants are enjoined from entering into
23 any form of agreement or understanding, whether expressed or
24 implied, with any manufacturer of DWV plastic pipe fittings
25 to fix, suggest or stabilize prices, discounts or other
26 terms for the sale of such fittings to any person, or to
27 exclude or eliminate any person from competing in the
28 production, marketing or sale of DWV plastic fittings, or
29 to refuse to sell DWV plastic pipe fittings to any other
30 manufacturer thereof.

31 The Judgment also enjoins defendants from verifying
32 or communicating to any other manufacturer of DWV plastic

1 pipe fittings, information concerning prices, discounts,
2 or terms of sale for such fittings, except when done solely
3 to verify past prices, discounts, or other terms or con-
4 ditions of sale when needed for use in litigation. Defendants
5 may also include their existing and prospective customers on
6 their general mailings to the trade.

7 Defendants are not precluded from good faith and arms
8 length purchase and sale transactions or negotiations with
9 other manufacturers of DWV plastic pipe fittings, including
10 an expression of the price as a discount or chain of dis-
11 counts applied to list prices. Defendants may also engage
12 in good faith and arms length negotiations with other
13 manufacturers of DWV pipe fittings for the purchase or
14 sale of the capital stock of a DWV fittings manufacturer
15 or of capital assets used or employed in the manufacture
16 or sale of such fittings; however, no implication of
17 legality of such acquisition is to be implied from this
18 provision. Defendants may publish and distribute to the
19 trade price lists and discount sheets, provided that any
20 such lists or sheets shall include a statement indicating
21 that the customer is free to resell at any price he may
22 choose.

23 The Judgment further provides that for a period of
24 five years, each defendant at the time it publishes new
25 price lists or discount sheets relating to the sale of
26 DWV plastic pipe fittings, shall certify by affidavit
27 that such prices and discounts were independently arrived
28 at by said defendant, and were not the result of any agree-
29 ment or understanding with any competitor.

30 The Judgment contains provision for access by the
31 Antitrust Division to records and documents of any defendant,
32 and to interview officers and employees of any defendant

1 relating to any matters covered by the Judgment. The Court
2 has retained jurisdiction so as to enable any of the parties
3 to the Judgment to apply to the Court for such further orders
4 and directions as may be necessary for the construction or
5 carrying out of the Judgment or for the modification of any
6 provisions thereof. The relief in the proposed Judgment is
7 similar to that contained in other judgments involving price-
8 fixing.

9 ALTERNATIVE RELIEF

10 The Complaint in this case sought basic injunctive
11 relief to prevent the defendants from continuing to carry
12 out, directly or indirectly, the combination and conspiracy
13 to fix and maintain prices for the sale of DWV plastic pipe
14 fittings to others. The Complaint further asked that the
15 Court order each defendant to withdraw its effective price
16 lists and discount terms for DWV plastic pipe fittings, and
17 to issue new prices and discounts on the basis of its own
18 independent cost and profit figures. The proposed Judgment
19 does not contain such a requirement. It is believed that
20 this aim is adequately accomplished by the requirement of
21 affidavits attesting to the independent determination of
22 prices and terms of sale, as set out in Section V of the
23 Final Judgment. This is not a substantial variance from
24 the relief requested in the Complaint. This requirement,
25 and the other provisions of the proposed consent Judgment,
26 are sufficient to dissipate and prevent a recurrence of
27 the restraints charged.

28 PRIVATE REMEDIES

29 Entry of the proposed consent Judgment will not affect
30 the right of any potential private plaintiff who might have
31 been damaged by the alleged violations to sue for monetary
32 damages and any other legal and equitable remedies. However,

1 this Judgment may not be used as prima facie evidence in
2 private litigation pursuant to Section 5(a) of the Clayton
3 Act, as amended, 15 U.S.C. 16(a).

4 Since the filing of the Complaint in this case, more
5 than 2500 class action claimants have filed in the Federal
6 District Court in Los Angeles for damages sustained as a
7 result of the defendants' alleged violations of the anti-
8 trust laws. These claims have now been settled.

9 MODIFICATION OF JUDGMENT

10 The proposed Final Judgment is subject to a stipulation
11 by and between the United States and the Defendants, which
12 provides that the United States may withdraw its consent to
13 the proposed Final Judgment at any time until the Court has
14 found that entry of the proposed Judgment is in the public
15 interest. By its terms, the proposed Judgment also provides
16 for retention of jurisdiction of this action in order, among
17 other things, to permit any of the parties thereto to apply
18 to the Court for such orders as may be necessary or appro-
19 priate for its modification.

20 COMMENTS

21 As provided by the Antitrust Procedures and Penalties
22 Act, any persons wishing to comment on the proposed Judgment
23 may, for a 60-day period, submit written comments to Raymond
24 P. Hernacki, Esquire, United States Department of Justice,
25 Antitrust Division, 1444 United States Court House, Los
26 Angeles, California 90012. The Antitrust Division will
27 file with the Court and publish in the Federal Register such
28 comments and its responses thereto. The Department of Justice
29 will thereafter evaluate any and all such comments and
30 determine whether there is any reason for withdrawal of its
31 consent to the proposed Final Judgment.

