

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
 :
 Plaintiff, :
 :
 v. :
 :
 ANDREW CARLSON & SONS, INC.; :
 W.D. BOCCARD & SONS, INC.; and :
 CARBRO INDUSTRIES, INC., :
 :
 Defendants. :

Civil Action No. 76 C 349

filed: 20 SEP 1979

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The United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil anti-trust proceeding.

I

NATURE OF THE PROCEEDINGS

On February 24, 1976 the Government filed a civil anti-trust action under Section 4 of the Sherman Act (15 U.S.C. § 4) alleging that the above named defendants had combined and conspired in violation of Section 1 of the Sherman Act (15 U.S.C. Section 1) from at least as early as 1963 to fix, raise, maintain and establish the prices on precast concrete products and to fix and maintain maximum discounts given by the defendants to purchasers of precast concrete products.

Entry by the court of the proposed Final Judgment will terminate this action. However, the court will retain jurisdiction over the matter for ten (10) years for possible further proceedings which may be needed to interpret, modify, or enforce the Judgment or to punish violations of any of the provisions thereof.

II

DESCRIPTION OF THE PRACTICES INVOLVED IN THE ALLEGED VIOLATION

The defendants were all manufacturers of precast concrete products located in Nassau and Suffolk Counties, New York.

Precast concrete products are cylindrical structures such as drainage rings, storm water rings, solid rings and their related products all of which are used for the subsurface disposal of storm water and sanitary waste. According to the complaint, the defendants' combined precast concrete product sales of approximately \$6 million in 1974 constituted at least 75% of all precast concrete products sales in Nassau and Suffolk Counties.

In forming and effectuating the combination and conspiracy alleged in the complaint, the defendants communicated to one another at meetings, in telephone conversations and on other occasions; agreed upon the prices to be included in their list prices; and agreed on the maximum discounts they would give to their customers. The evidence produced at trial would show that as a result of the conspiracy, the prices on precast concrete products have been fixed, raised, and maintained at artificial and noncompetitive levels and that the purchasers of precast concrete products have been deprived of free and open competition; and competition in the sale of precast concrete products has been restrained.

III

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The Government 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. This stipulation provides that there has been no determination 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 Judgment is conditioned upon a determination by the court that the proposed Judgment is in the public interest.

A. Prohibited Conduct

The proposed Judgment prohibits each defendant from adhering to, maintaining, enforcing, or entering into, directly

or indirectly, any contract, agreement, combination, understanding, plan or program with any other person to fix, determine, establish, maintain, raise, stabilize, or adhere to prices, discounts or other terms or conditions for the sale of precast concrete products; or to fix, determine, establish, maintain, raise, stabilize, or adhere to any charge for the delivery of precast concrete products to any third person.

Each defendant is also enjoined from communicating or exchanging with any other person engaged in the manufacture, distribution or sale of precast concrete products, any information concerning any actual or proposed price, price change, discount, delivery charge, or other term or condition of sale at which precast concrete products are to be or have been sold by said defendant. Additionally, each defendant is also enjoined from requesting or receiving from any other person engaged in the manufacture, distribution, or sale of precast concrete products, information of the type which said defendant could not communicate to such other manufacturer or distributor of precast concrete products without violating paragraph (A) of Section V of the Final Judgment.

Each defendant can, however, communicate such information as is necessary to the bona fide purchase or sale of precast concrete products between a defendant and any other defendant or any other manufacturer or seller of precast concrete products or any of their agents, brokers, distributors, or representatives.

Each defendant is ordered within 60 days of the entry of the Final Judgment to have its attorney explain the provisions of the Final Judgment to each of its officers, directors, agents and employees who have any responsibility for establishing prices, discounts or other terms or conditions for the sale of precast concrete products.

B. Scope of the Proposed Judgment

The proposed Judgment applies to each defendant, its officers, directors, agents and employees and to each defendants' subsidiaries, affiliates, successors, and assigns and

to those persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

The defendants are bound by the prohibition of the proposed Judgment for ten (10) years from the date of its entry.

C. Competitive Effects of the Proposed Judgment

The provisions of the proposed Final Judgment are designed to prevent any recurrence of the illegal conduct alleged in the complaint and contain all of the relief sought in the complaint. The proposed Judgment should ensure that no future agreements or combinations between or among the defendants to fix, raise, maintain, or stabilize the price and maximum discounts of precast concrete products will be arranged.

The proposed Judgment provides methods for determining the defendants' compliance with the terms of the Judgment. The Antitrust Division, through duly authorized representatives, may interview officers, employees and agents of each defendant regarding its compliance with the Judgment. Representatives of the Division are also given access, upon reasonable notice, to examine each defendant's records for possible violations of the Judgment and to request defendants to submit reports on matters contained in the Judgment.

Accordingly, the Government believes that the public interest is best served by the entry of the proposed Judgment. Further litigation would not result in any additional relief.

IV

ALTERNATIVE REMEDIES CONSIDERED BY THE ANTITRUST DIVISION

The defendants initially proposed a Final Judgment which the Government concluded did not ensure that the conspiracy charged in the complaint would not continue or recur. The Government offered a counter-proposal from which the Final Judgment was negotiated.

The primary point of difference that was ultimately compromised between the parties related to the injunction prohibiting the defendants from purchasing from one another. The defendants drafted a proviso which authorized necessary negotiations or communications between a defendant and any other defendant or any other manufacturer or seller of precast concrete products whose sole purpose is a proposed or actual bona fide purchase or sale. The Government agreed to this modification since the conduct contemplated is lawful and does not increase the risk of recurrence of the illegal acts alleged in the complaint.

V

REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGATION

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 the Federal Court to recover three times the damage such person has suffered as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any such private actions. Under the provisions of Section 5 of the Clayton Act (15 U.S.C. § 16(a)), this Final Judgment has no prima facie effect in any lawsuits which may be pending or hereinafter brought against the defendants.

VI

PROCEDURES AVAILABLE FOR MODIFICATIONS OF THE PROPOSED JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Judgment should be modified may submit written comments to Ralph T. Giordano, Antitrust Division, U.S. Department of Justice, Room 3630, 26 Federal Plaza, New York, New York 10007, within the sixty-day period provided by the Act. These comments and the Government's response to them, will be filed with the Court and published in the Federal Register. All comments received will be given due consideration by the Government, which

remains free to withdraw its consent to the proposed Judgment at any time prior to its entry, if it should determine that some modification of it is necessary. The proposed Judgment provides that the Court retains jurisdiction over this action, and that the parties may apply to the Court for such order as may be necessary or appropriate for its modification, interpretation or enforcement.

VII

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The alternative to the proposed Judgment is a full trial on the merits. The Government considers the proposed Final Judgment to be of sufficient scope and effectiveness to make litigation on the issues unnecessary, as the Judgment provides full relief against the violations charged in the Complaint.

VIII

OTHER 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) were considered in formulating this proposed Judgment. Consequently, none are submitted pursuant to such Section 2(b).

Dated: New York, New York

20 SEP 1979 ~~1979~~

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