

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF COLUMBIA

_____	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 79-2579
	)	
UNDER SEA INDUSTRIES,	)	Filed:
INCORPORATED,	)	
	)	
Defendant.	)	
	)	
_____	)	

COMPETITIVE IMPACT STATEMENT

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

I.

NATURE AND PURPOSE OF PROCEEDING

On September 27, 1979, the Department of Justice filed a civil antitrust complaint against Under Sea Industries, Inc. ("USI") under Section 4 of the Sherman Act (15 U.S.C. §4), alleging a conspiracy to fix the retail prices of Scubapro-brand scuba diving equipment throughout the United States. The complaint also sought injunctive relief to prevent the continuance of the conspiracy.

II.

DESCRIPTION OF PRACTICES INVOLVED  
IN THE ALLEGED VIOLATION

The defendant, USI, manufactures and sells scuba diving equipment under the trade name "Scubapro". Scuba diving is a

recreational sporting activity in which the participant swims underwater for extended periods of time with the aid of Self-Contained Underwater Breathing Apparatus (S.C.U.B.A.). A scuba diver typically uses several pieces of equipment for underwater diving, including facemask, wetsuit, compressed air tank, regulator, underwater gauges, flotation or buoyancy control vest, knife and fins. USI, which manufactures a full line of scuba diving equipment, markets its Scubapro-brand products through authorized Scubapro dealers who sell and service scuba diving equipment, and also provide scuba diving instruction.

The complaint alleges that, since at least as early as 1963 and continuing at least to the date the complaint was filed, USI has engaged in a conspiracy with its Scubapro dealers to maintain the retail prices at which Scubapro equipment is sold to the public. According to the complaint, dealers agreed to sell Scubapro equipment at the prices set by USI, and USI and Scubapro dealers agreed not to sell Scubapro equipment to other dealers who discounted from USI's suggested list prices. Also, the complaint alleged that Scubapro dealers would report to USI instances of discounting by other dealers in order that USI could take action to eliminate such sales. The complaint further alleged several anti-competitive effects which resulted from this conspiracy: retail prices for Scubapro equipment have been fixed, stabilized and maintained at non-competitive and artificial levels; price competition among Scubapro dealers in the sale of Scubapro equipment has been suppressed and eliminated; and consumers have been deprived of the opportunity of buying Scubapro equipment at competitive prices.

### III.

#### EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and the defendant have agreed, by stipulation, that the Court may enter the proposed Final Judgment at any time after compliance with the Antitrust Procedures and

Penalties Act. The proposed consent judgment provides that its entry does not constitute any evidence against or any admission by either party with respect to any issue of fact. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(e), entry of the Final Judgment is conditioned upon a determination by the Court that the proposed Judgment is in the public interest.

A. Prohibited Conduct

Section IV of the proposed Final Judgment will prohibit the defendant from participating, in any way, in any contract, agreement, combination or mutual understanding with any dealer to fix, raise, maintain, or stabilize retail prices, discounts margins or markups at which Scubapro equipment is sold by such dealer or any other dealer. USI is further prohibited from penalizing or threatening to penalize any Scubapro dealer because of the prices, discounts, markups or margins of profit at which that dealer, or any other dealer, sells or advertises Scubapro equipment.

Section V permits USI to suggest retail prices or explain the basis for such suggestion, but only on condition that in so doing it further informs each dealer that such prices are suggested only and that each dealer is free to sell at whatever prices, discounts, markups or margins of profit such dealer may choose.

Section VI reserves the defendant's right to select, limit, or terminate Scubapro dealers, except where these rights have been restricted by the provisions of Section IV discussed above.

B. Affirmative Obligations

Section VII requires the defendant, within 60 days of entry of the Judgment, to furnish a copy of the Judgment to each of its officers and directors, and to each employee or agent who is engaged in or has responsibility for the sale or distribution of Scubapro equipment, and to each of their successors within 60 days of employment. The defendant is also obligated to

provide a copy of this Final Judgment, along with a written notice of the Judgment in a form acceptable to the Department of Justice, to all present dealers, and for the following four years, to each newly authorized Scubapro dealer. USI is also required to keep files of all suspended or terminated Scubapro dealers, including their names and addresses, and the reasons for their suspension or termination.

Under Section VII(E), the defendant must initiate and maintain an antitrust compliance program involving each officer and each employee who is engaged in, or is responsible for, the sale of Scubapro equipment. As part of this program, each of these persons must annually receive a copy of the Judgment and a directive outlining the disciplinary consequences of non-compliance with the terms of the Judgment and indicating the availability of supervisory personnel and legal advisors to deal with questions or problems concerning compliance with the Judgment. In addition, the defendant must hold meetings with these persons to review the provisions of the Judgment and their obligations under the Judgment at sufficient intervals so that each person attends at least one meeting every twelve months. A responsible officer of the defendant must sign and retain an acknowledgment that these requirements have been fulfilled, including a list of persons who received the directive and attended the meetings.

Section VII(F) requires the defendant to provide to the Department of Justice an affidavit of compliance with the provisions of Section VII within ninety days of entry of the Judgment and annually thereafter.

The Department of Justice is given access, under Section VIII of the proposed Judgment, to the files and records of USI, to examine such records for compliance or non-compliance with the judgment. The Department is also granted access to

interview employees of the defendant to determine whether the defendant is complying with the judgment.

Under Section IX, USI shall require any purchaser of all or substantially all the assets used by USI in its scuba diving equipment business to agree to be bound by the judgment and to file with the Court and serve on the plaintiff its consent.

C. Scope of the Proposed Judgment

The proposed Final Judgment will remain in effect for a period of ten years from the date of entry, except to the extent otherwise provided. It applies to USI, its officers, directors, agents, employees, domestic subsidiaries, successors and assigns, and to all other persons in active concert with any of them, who receive actual notice of the judgment. The Judgment does not apply to transactions solely between or among USI and its officers, directors, employees, parents and domestic subsidiaries.

D. Effect of the Proposed Judgment on Competition

The relief encompassed in the proposed Final Judgment is intended to prevent any continuance or recurrence of the activities alleged in the Complaint. The prohibitive language of the Judgment should ensure that retail prices of Scubapro equipment will be arrived at independently by individual Scubapro dealers and by any other dealers who resell Scubapro equipment to consumers. The Judgment makes it clear that Scubapro dealers cannot be pressured or coerced by the defendant into selling at USI's list prices. The affirmative obligations set forth in the Final Judgment are designed to ensure that Scubapro dealers are aware of their rights, that USI's officers, employees and agents are reminded of their obligations under the Final Judgment, and that the Department of Justice is able to adequately monitor defendant's activities in the future.

The Department of Justice is of the opinion that the proposed Final Judgment is fully adequate to prevent future antitrust violations by USI of the type reflected in the complaint.

IV.

PROCEDURES 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 suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), this judgment has no prima facie effect in any subsequent lawsuits that may be brought against this defendant.

V.

PROCEDURES AVAILABLE FOR MODIFICATION  
OF THE PROPOSED JUDGMENT

The proposed Final Judgment is subject to a stipulation by and between the United States and the defendant which provides that the United States may withdraw its consent to the proposed judgment at any time before the Court has found that entry of the proposed judgment is in the public interest. By its terms, the proposed Final Judgment provides for the Court's retention of jurisdiction of this action in order to permit either of the parties to apply to the Court for such orders as may be necessary or appropriate for the modification of the Final Judgment.

As provided by the Antitrust Procedures and Penalties Act, any person wishing to comment on the proposed Final Judgment may, within the 60 days provided by the Act, submit written comments to:

John W. Clark, Chief  
Special Trial Section  
Antitrust Division  
U.S. Department of Justice  
Washington, D. C. 20530

Such comments, and the Department of Justice's responses, will be filed with the Court and published in the Federal Register. The Department of Justice will evaluate all such comments and determine whether there are any reasons for withdrawal of its consent to the judgment.

VI.

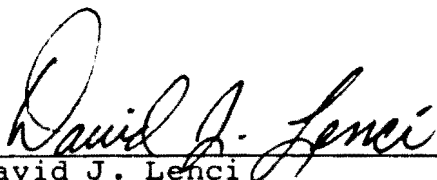
ALTERNATIVES TO THE PROPOSED  
CONSENT JUDGMENT

The alternative to the proposed Final Judgment considered by the Department of Justice was a full trial on the merits. The Department considers the proposed Final Judgment to be of sufficient scope and effectiveness to make such a trial unnecessary, since it provides appropriate relief against the violations alleged in the Complaint and imposes affirmative obligations on defendant intended to ensure compliance with the law and the Final Judgment.

VII.

DETERMINATIVE MATERIALS AND DOCUMENTS

Since no materials or documents were considered determinative by the United States in formulating the proposed Final Judgment, none are being filed by the United States pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act.

  
\_\_\_\_\_  
David J. Lenci

Attorney, Department of Justice  
Antitrust Division  
Washington, D. C. 20530  
(202) 724-6264