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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. THE GILLETTE COMPANY, WILKINSON SWORD, INC., STORA KOPPARBERGS BERGSLAGS AB, and EEMLAND MANAGEMENT SERVICES BV, Defendants.	Civil Action No. 90-0053-TFH

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)-(h)), the United States of America files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of defendants The Gillette Company, Wilkinson Sword, Inc., and Eemland Management Services BV in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

This civil proceeding began on January 10, 1990 when the United States filed a complaint alleging that the acquisition by The Gillette Company ("Gillette") of the Wilkinson Sword wet shaving razor blade businesses of Eemland Management Services

BV ("Eemland") outside the 12-nation European Community ("E.C.") violated Section 7 of the Clayton Act (15 U.S.C. § 18). The non-E.C. businesses included the wet shaving razor blade business of Eemland's wholly-owned subsidiary in the United States, Wilkinson Sword, Inc. ("Wilkinson"). The complaint alleged that the effect of this acquisition may have been substantially to lessen competition in the sale of wet shaving razor blades in the United States. As defined in the complaint, wet shaving razor blades include those sold in packages of disposable blades or as part of disposable or reusable razors. The complaint requested that Gillette's acquisition of these businesses from Eemland be rescinded and that Gillette be barred from acquiring ownership or control over these businesses.

The United States and defendants Gillette, Eemland, and Wilkinson have agreed that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act and that the defendants will be bound by the provisions of the proposed Final Judgment pending its approval by the Court. Entry of the proposed Final Judgment, along with the dismissal of the complaint against the fourth defendant, Stora Kopparbergs Berslags AB ("Stora"), would terminate this civil action, except that the Court would retain jurisdiction to construe, modify, and enforce the Final Judgment, and to punish violations of the Final Judgment.

II. EVENTS GIVING RISE TO THE ALLEGED VIOLATION

1. The Acquisition

On December 20, 1989, Stora, a corporation based in Sweden, contracted to sell its wet shaving, lighter, and match businesses throughout the world to Eemland, a Netherlands corporation formed by a buyout group that included Gillette, certain managers of the businesses, and other investors. Stora's wet shaving business operated under the Wilkinson Sword trademark in the United States, Europe, and other areas of the world, and produced wet shaving razor blades and other wet shaving products. As part of the buyout plan, the buyout group contracted on the same date to sell the non-E.C. wet shaving businesses to Gillette. These businesses included Wilkinson, an Atlanta, Georgia-based firm that distributed in the United States and Canada Wilkinson Sword brand wet shaving razor blades and other wet shaving products manufactured by its affiliates abroad.

Eemland purchased the businesses from Stora for about $630 million, about one quarter of which came from Gillette at the time the contract was signed. Gillette purchased the non-E.C. wet shaving businesses for about $72 million. It also acquired about 23 percent of the non-voting equity shares of Eemland for about $14 million and subordinated debentures of Eemland for about $69 million. The non-voting equity shares will convert to voting shares under certain limited circumstances and interest on the debt will accrue as additional debt held by Gillette.

2. Market Conditions

Consumers in the United States annually purchase over $700 million of wet shaving razor blades at the retail level. Only five companies supply all but a nominal amount of those blades -- Gillette, Wilkinson, Warner-Lambert Co. (Schick brand), BIC Corp. (BIC brand), and American Safety Razor Co. (Persona brand).

The complaint alleged that the market for wet shaving razor blades in the United States is a relevant product market for antitrust purposes and is highly concentrated. Gillette has been the market leader for many years. In 1989, Gillette accounted for over 50 percent of all wet shaving razor blades sold in the United States, in terms of units sold. In that year, Wilkinson accounted for a substantial portion of those blades sold in the United States. By acquiring Wilkinson's wet shaving razor blade business, Gillette would have increased substantially its already majority share of the United States market. Such an acquisition would have increased the Herfindahl-Hirschman Index (an indicator of market concentration) by over 600 points to over 4000.

The complaint alleged that entry into the United States market for wet shaving razor blades on a significant competitive level is difficult and time consuming. The entry obstacles include establishing the necessary brand recognition, distribution networks, and production facilities.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT AND ITS ANTICIPATED EFFECTS ON COMPETITION

The United States brought this action because the effect of Gillette's acquisition of Eemland's Wilkinson Sword wet shaving razor blade businesses outside the E.C. may have been substantially to lessen competition in the sale of wet shaving razor blades in the United States in violation of Section 7 of the Clayton Act. Shortly after this case was filed, Gillette, Eemland, and Wilkinson rescinded Gillette's acquisition of Eemland's wet shaving razor blade business in the United States. The proposed Final Judgment would ensure the status quo by providing that Gillette could not, without the prior consent of the United States, reacquire the Wilkinson Sword wet shaving razor blade business in the United States or otherwise deprive Eemland of assets necessary to efficiently supply and support its wet shaving razor blade business in the United States. In particular, Section IV.1 would prohibit Gillette from acquiring further equity or additional debt of Eemland beyond the debt that will accrue under the terms of the existing agreements. Also, Section IV.2 would prohibit Gillette from acquiring assets that Eemland had been using to produce wet shaving razor blades for sale in the United States or the E.C., or to market, distribute, or sell wet shaving razor blades in the United States, with the exception of

surplus production assets 1/ and certain intellectual property rights (as long as the United States rights are licensed to Eemland). 2/ In the same vein, Section IV.3 would prohibit Gillette from acting as Eemland's agent for the United States wet shaving razor blade market.

Section V of the proposed Final Judgment, which focuses on Eemland, would prohibit certain similar actions without the prior consent of the United States. Section V.1 would prohibit Eemland from transferring to Gillette those assets and securities that Section IV.1 and 2 would prohibit Gillette from obtaining from Eemland. Section V.2 would prohibit Eemland from transferring to Gillette trademarks that Eemland has used in the past year to sell wet shaving razor blades in the United States or the E.C. Section V.3 would bar Eemland from consenting to the revocation of certain intellectual property licenses from Gillette. Section V.4 would prohibit Eemland from using Gillette as an agent for the United States wet shaving razor blade business.

1/ Section IV.6 of the proposed Final Judgment would provide a means for Court review if there is disagreement as to whether particular assets are surplus.

2/ Gillette may have acquired certain intellectual property rights from Eemland that apply indivisibly to the United States as well as other geographic areas. Section IV.2 would permit Gillette to retain those rights as long as Eemland has an irrevocable, royalty free, exclusive license to those rights for the United States. Gillette granted such a license to Eemland when the parties rescinded Gillette's acquisition of Eemland's United States wet shaving razor blade business.

Rescinding just Gillette's acquisition of the United States business, however, would still have left substantial risk to competition in the United States since Gillette would remain an Eemland shareholder and creditor and also would be a marketer of wet shaving razor blades bearing the Wilkinson Sword trademark in geographic regions, such as Canada, adjoining Eemland's marketing areas. In each of these capacities, Gillette could have influenced Eemland in the conduct of its United States business. The proposed Final Judgment would substantially eliminate these competitive risks by restraining Gillette's ability to influence Eemland.

Section VI.1 of the proposed Final Judgment would prohibit Gillette or Eemland from agreeing or communicating in an effort to persuade the other to agree regarding various competitively sensitive subjects, such as prices to third parties in the United States and output for sale in the United States. It also would prohibit wet shaving razor blade purchase and sale transactions between Gillette and Eemland that would impair Eemland's ability to compete in the United States. Section VI.2 of the proposed Final Judgment would prohibit Gillette from attempting to use its position as an Eemland equityholder or creditor to exert any influence over Eemland's wet shaving razor blade business. Section VI.3 would require Gillette to provide to Eemland a proxy to cast any voting rights in Eemland that Gillette may obtain in the exact proportion as those votes cast by other holders of Eemland's securities. Thus, Gillette

could exercise no discretion in how its votes, if any, are cast. Moreover, Section VI.3 would restrict Gillette from engaging in the management of Eemland and bar Gillette from nominating any Eemland directors or having any Gillette representative serve as a manager, officer, director, advisor or consultant, or in any comparable position with or for Eemland.

Section VI.4 of the proposed Final Judgment would specifically address Gillette's role as an Eemland creditor and would prohibit certain actions by Gillette without the prior consent of the United States. This Section would prohibit Gillette from using its creditor position in Eemland to prevent or restrict Eemland from refinancing or obtaining additional credit or capital. Additionally, it would bar Gillette from attempting to use its creditor position to initiate any action that reasonably could be expected to cause Eemland to become insolvent or bankrupt. It further would restrict Gillette from using its creditor position to oppose any bankruptcy or insolvency plan supported by Eemland.

Section VI.5 of the proposed Final Judgment would provide a procedure for Gillette or Eemland to obtain Court review in the event that the United States does not consent to a proposed action that otherwise would be prohibited by the proposed Final Judgment without that consent.

In view of Gillette's major position in the market, Section IV of the proposed Final Judgment would require

Gillette to notify the United States before making certain acquisitions from or of competitors in the United States wet shaving razor blade market, in situations where (as in this instance) no preacquisition notification is filed pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. § 18a). Section IV.4 would require such notification before Gillette purchased assets that a substantial competitor used to supply the United States market during the year preceding the purchase or before Gillette acquired an equity or voting interest of 10 percent or more in a substantial competitor in the United States market. Section IV.5 would describe the required notification.

Section VII of the proposed Final Judgment would provide for notification to the United States about various significant events, including Gillette obtaining a voting interest in Eemland. Section VIII of the proposed Final Judgment would require each defendant to take various actions to inform its officers, directors, and appropriate employees of their obligations under the Final Judgment.

Section IX of the proposed Final Judgment would provide a means for the United States to obtain information from the defendants to determine or secure compliance with the proposed Final Judgment. Under Section X, the Court would retain jurisdiction over this matter.

Section XI of the proposed Final Judgment would provide for expiration of the proposed Final Judgment on the tenth

anniversary of its entry. However, if Gillette still retains any interest in Eemland at that time, only Sections IV and V would expire. The rest of the Final Judgment would continue until such time as Gillette no longer retains any interest in Eemland, to prevent Gillette from influencing Eemland.

IV. 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 reasonable attorney fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage actions. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), entry of the proposed Final Judgment would have no prima facie effect in any subsequent private lawsuit that may be brought against the defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and defendants Gillette, Eemland, and Wilkinson have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Antitrust Procedures and Penalties Act, provided that the United States has not withdrawn its consent. The Act conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The Act provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wants to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to:

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Under Section X of the proposed Final Judgment, the Court would retain jurisdiction over this matter for the purpose of enabling the United States or the defendants to apply to the Court for such further orders or directions as may be necessary or appropriate for the construction, implementation, modification, or enforcement of compliance with the Judgment, or for the punishment of any violations of the Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

Compliance with the proposed Final Judgment would permit Eemland to remain an efficient and independent competitor in the United States.

In its complaint, the United States sought to rescind not only Gillette's acquisition of the Wilkinson Sword wet shaving business in the United States, which the defendants already have done, but also Gillette's acquisition of those businesses outside of the United States and the E.C. After conducting discovery on the issue, the United States concluded that Eemland has ample production capability in the E.C. to serve the E.C. and the United States markets, has sufficient total sales to support the necessary research and development, and has the intent and incentive to compete actively in the United States market. Thus, the United States decided that the return to Eemland of wet shaving businesses outside the United States and the E.C. was not necessary to ensure that Eemland would be an effective competitor in the United States market.

The United States also considered requiring the parties to rescind Gillette's acquisition of the Wilkinson Sword wet shaving razor blade business in Canada, in view of the proximity of Canada to the United States market and the fact that Wilkinson's Atlanta, Ga. facility packaged and distributed wet shaving razor blades for Canadian as well as United States customers. Plaintiff learned, however, that Gillette's potential ability to negatively influence the United States

market by actions in Canada was not very great and that the economies arising from supplying both the United States and Canada from a single packaging and distribution facility were not substantial. In addition, continued litigation to try to obtain these marginal competitive benefits by rescinding Gillette's acquisition of the Canadian Wilkinson Sword business would entail substantial time and expense coupled with a substantial risk that the United States would not succeed on this issue.

The complaint also sought rescission of Gillette's investments in Eemland. The United States concluded, however, that such a requirement was not necessary to prevent Gillette from exerting influence over Eemland in view of the provisions to prevent that influence that are included in the proposed Final Judgment.

Under the circumstances, the United States determined that the public interest in preserving competition in the wet shaving razor blade market in the United States would be served best by prompt entry of an enforceable consent decree of the nature proposed. Although the proposed Final Judgment may not be entered until the criteria established by the Antitrust Procedures and Penalties Act (15 U.S.C. § 15(b)-(h)) have been satisfied, the public will benefit immediately from the safeguards in the proposed Final Judgment because the defendants have stipulated to comply with the terms of the Judgment pending its entry by the Court.

VII. DETERMINATIVE DOCUMENTS

No documents were determinative in the formulation of the proposed Final Judgment. Consequently, the United States has not attached any such documents to the proposed Final Judgment.

Respectfully submitted,

Dated: March 26, 1990

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