

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 872522
)	
DETROIT LUMBERMEN'S)	Judge Patricia J. Boyle
ASSOCIATION;)	
ERB LUMBER CO.;)	Filed: October 16, 1980
C. F. GIBBS LUMBER COMPANY;)	
GROESBECK LUMBER & SUPPLY,)	
INC.;)	
HAGGERTY LUMBER & SUPPLY CO.;)	
NATIONAL LUMBER COMPANY; and)	
WALLICH LUMBER COMPANY,)	
)	
Defendants.)	

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2 of the Antitrust Procedures and Penalties 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 September 29, 1978, the United States filed a civil antitrust complaint alleging that six retail lumber dealers and one trade association conspired to fix prices in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

The Complaint alleges that, beginning at least as early as 1970 and continuing thereafter until April 1977, the defendants engaged in a combination and conspiracy to fix, raise, stabilize, and maintain the prices of lumber and related products to builders in Southeastern Michigan. The Complaint alleges that in forming and effectuating the

combination and conspiracy, the defendants: (a) participated on the Marketing Committee of the Detroit Lumbermen's Association and through that Committee formulated and agreed upon a list of prices for lumber and related products to be published in a Market Report for the following month; (b) discussed and agreed upon, at regular monthly meetings of the Marketing Committee, costs and mark-ups to be reflected in the prices included in the Market Report for the following month; and (c) disseminated the Market Report to members of the Detroit Lumbermen's Association, as well as other retail lumber dealers and builders in Southeastern Michigan, for their use in arriving at pricing decisions.

The Complaint seeks a judgment by the Court that the defendants engaged in an unlawful combination and conspiracy in restraint of trade in violation of the Sherman Act. It also asks that the Court enjoin the defendants from such activities in the future, and it seeks to have the Detroit Lumbermen's Association dissolved.

The defendants named in the Complaint are: Detroit Lumbermen's Association; Erb Lumber Co.; C.F. Gibbs Lumber Company; Groesbeck Lumber Company; Haggerty Lumber & Supply Co.; National Lumber Company; and Wallich Lumber Company. Since the filing of the Complaint, Groesbeck Lumber Company, a partnership, has incorporated its retail lumber business and now operates that business as Groesbeck Lumber & Supply, Inc.

All of the defendants to this action have previously pleaded nolo contendere to criminal felony charges concerning the same combination and conspiracy alleged in this action. Fines ranging from \$20,000 to \$75,000 were levied against the defendants. This civil case had been held in abeyance until the criminal charges were resolved.

II

DESCRIPTION OF THE PRACTICES GIVING RISE TO THE ALLEGED VIOLATION OF THE ANTITRUST LAWS

During the period covered by the Complaint, each of the defendants, except the Detroit Lumbermen's Association, sold lumber and related products in Southeastern Michigan, and the Detroit Lumbermen's Association was a trade association of lumber dealers in that area. The defendant retail lumber dealers purchased lumber and related products from mills, brokers, and wholesalers, and sold them to builders in Southeastern Michigan and outside the State of Michigan. For the period 1970 to April 1977, the defendant retail lumber dealers, which were among the leading retail lumber dealers in Detroit and Southeastern Michigan, had total sales in excess of \$200 million for lumber and related products listed on the Market Report.

The Complaint alleges that the defendants engaged in an illegal combination and conspiracy beginning at least as early as 1970 and continuing thereafter until April 1977 that consisted of a continuing agreement, understanding, and concert of action among themselves and co-conspirators to fix, raise, stabilize and maintain prices of lumber and related products to builders in Southeastern Michigan.

The Complaint alleges that the combination and conspiracy had the following effects, among others:

- (a) prices of lumber and related products to builders were fixed, raised, stabilized and maintained in Southeastern Michigan at artificial and non-competitive levels; and

(b) customers, including builders, in Southeastern Michigan were deprived of the benefits of full, free, and open competition in the purchase of lumber and related products.

III

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States 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. The proposed Final Judgment states that it constitutes no admission by any party with respect to any issue of fact or law.

The proposed Final Judgment enjoins any direct or indirect renewal of the type of conspiracy alleged in the Complaint. Specifically, Section IV enjoins and restrains the defendants from entering into, adhering to, participating in, maintaining, reviving, renewing, furthering, enforcing, or claiming any rights under any contract, agreement, understanding, arrangement, plan, program, combination, or conspiracy with any defendant or other retail lumber dealer to fix, establish, raise, stabilize or maintain prices or other terms or conditions for the sale of lumber and related products.

Section V of the proposed Final Judgment enjoins the defendants from communicating with each other or with any other retail lumber dealer about the prices or terms of sale of lumber and related products. Specifically, the defendants are enjoined and restrained from:

- (A) Recommending, suggesting the use of, publishing, circulating, or otherwise transmitting to, or formulating, adopting, reviving, or renewing with, any defendant or other retail lumber dealer any price, price list, formula, guide, schedule, manual, report or method for pricing of lumber and related products;
- (B) Communicating to, requesting from or exchanging with any defendant or any other retail lumber dealer in Southeastern Michigan any statistics or other information concerning past, current, or future prices, costs, terms or conditions of sale, discounts, or actual or proposed pricing policies, or any consideration or contemplation of changes therein, for the sale of lumber and related products in Southeastern Michigan by any retail lumber dealer.

Since the defendant retail lumber dealers often sell lumber to one another, as well as to builders and consumers, Section VIII of the proposed Final Judgment permits communications in connection with a bona fide purchase or sale between the defendants. Section VIII also permits communications in connection with lawful joint ventures or an acquisition, merger or consolidation with another retail lumber dealer.

Section VI of the proposed Final Judgment enjoins the defendant retail lumber dealers from belonging to, or participating in, the activities of the Detroit Lumbermen's Association. Section VIII(B) is a limited exception that permits a defendant retail lumber dealer to participate only in a pension, insurance, or worker's compensation plan administered by the Detroit Lumbermen's Association so long as such plan or program is not inconsistent with any of the terms of the Final Judgment.

The Detroit Lumbermen's Association is enjoined by Section VII from sponsoring or participating in any meeting, conference, or seminar at which past, current, or future prices, costs, terms, or conditions of sale, discounts, or actual or proposed pricing policies for the sale of lumber and related products are discussed or communicated.

Section IX of the proposed Final Judgment orders the defendant retail lumber dealers to furnish a copy of the Final Judgment to each of their officers, employees, and agents who has responsibility for the pricing or sale of lumber and related products. Section IX also orders the defendant Detroit Lumbermen's Association to furnish a copy of the Final Judgment to each of its officers, directors, agents, employees and members. Successors of those persons are also to be furnished a copy of the Final Judgment. Each copy of the Final Judgment so provided will have attached a statement informing the recipient that a violation of the Final Judgment could result in a fine for the company and a fine and imprisonment for the individual. Section IX also requires each defendant to hold a meeting every year for five years at which the persons mentioned above are instructed on their obligations and the obligations of their company or Association under the Final Judgment. The defendants are required to implement a plan for monitoring compliance of those persons with the Final Judgment.

Section III of the proposed Final Judgment makes the Judgment applicable to the defendants and to their officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who have received actual notice of the Final Judgment.

Section X requires that, if a defendant sells the assets of its retail lumber dealership, the purchaser must agree to be bound by the Final Judgment and must so inform the Court and the United States.

Section XII makes the Final Judgment effective for ten years from the date of its entry.

Section XIV of the proposed Final Judgment states that entry of this Judgment is in the public interest. Under the provisions of the Antitrust Procedures and Penalties Act, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed Judgment is in the public interest.

Standard provisions similar to those found in other antitrust Final Judgments entered by consent are contained in Section I (jurisdiction of the Court), Section XI (investigation and reporting requirements), and Section XIII (retention of jurisdiction by the Court).

It is anticipated that the relief provided by the proposed Final Judgment will have a salutary effect on competition in the retail lumber market in Southeastern Michigan. Not only have the defendants been enjoined from future collusive behavior, but they also are required to provide copies of the Final Judgment to their officers, employees, and agents who have responsibility for the sale or pricing of lumber and related products. In addition, those people must meet annually to be instructed about their responsibilities under the Judgment. It is anticipated that these provisions will reduce the possibility of future violations.

IV

REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

After entry of the proposed Final Judgment, any potential private plaintiff that might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal or equitable relief that it may have had if the Final Judgment had not been entered. The Final Judgment may not be used, however, as prima facie evidence in private litigation, pursuant to Section 5(a) of the Clayton Act, as amended, 15 U.S.C. § 16(a).

V

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments within the 60-day period provided by the Act to John A. Weedon, Chief, Great Lakes Field Office, Antitrust Division, United States Department of Justice, 995 Celebrezze Federal Building, Cleveland, Ohio 44199 (telephone: 216-522-4070). These 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. The Department 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 necessary. Further, Section XIII of the

proposed Judgment provides that the Court retains jurisdiction over this action for the life of the Final Judgment and that the parties may apply to the Court for such order as may be necessary or appropriate for the modification, interpretation, or enforcement of the Judgment after its entry.

VI

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The alternative to the proposed Final Judgment considered by the Antitrust Division was a full trial on the merits and on relief. The Division considers the proposed Judgment to be of sufficient scope and effectiveness to make a trial unnecessary, since it provides appropriate relief against the violations alleged in the Complaint.

In the Complaint, the United States had sought to have the Detroit Lumbermen's Association dissolved. The proposed Final Judgment, however, does not order the Association to be dissolved. The United States has agreed, instead, to certain injunctions that the United States believes will be a sufficient remedy. Section VI of the proposed Final Judgment prohibits the defendant retail lumber dealers from belonging to, or participating in, the activities of the Detroit Lumbermen's Association. In addition, Section VII of the proposed Final Judgment prohibits the Detroit Lumbermen's Association from sponsoring or participating in any meeting, conference, or seminar at which past, current, or future prices, costs, terms, or conditions of sale, discounts, or actual or proposed pricing policies for the sale of lumber and related products are discussed or communicated. These two provisions will substantially reduce the possibility that the Association could be an instrument for renewing the violation alleged in the Complaint.

Even though the proposed Final Judgment prohibits the defendant retail lumber dealers from participating in the activities of the Detroit Lumbermen's Association in general (Section VI), the Judgment itself does not prohibit these defendants from participating in pension, insurance, and worker's compensation plans administered by the Detroit Lumbermen's Association so long as these plans are not inconsistent with any of the terms of the Final Judgment (Section VIII(B)). Only one defendant is currently a member of these plans, however, and the present rules of the Detroit Lumbermen's Association would not allow the other defendants to join these plans without joining the Association, which is prohibited by the Judgment (Section VI). These plans had no bearing on the violation alleged in the Complaint and allowing participation in these plans in no way weakens the injunctions in the proposed Final Judgment.

VII

DETERMINATIVE MATERIALS AND DOCUMENTS

No materials or documents were considered determinative by the United States in formulating the proposed Final Judgment. Consequently, none is being filed pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b).

Respectfully submitted,


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