UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA, Plaintiff, v. PILKINGTON plc and PILKINGTON HOLDINGS INC., Defendants.	Civil Action No. 94-345 Filed: May 25, 1994

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 hereby files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry against Pilkington plc ("Pilkington") and Pilkington Holdings Inc., Pilkington's indirectly, wholly-owned American subsidiary, in this civil antitrust action.

I.

NATURE AND PURPOSE OF THE PROCEEDING

A. The Complaint

The government filed this civil antitrust suit on May 25, 1994, alleging that defendants violated Sections 1 and 2 of the Sherman Act by enforcing and maintaining agreements and understandings that unreasonably restrain

interstate and foreign trade in the construction and operation of float glass plants and in float glass process technology, and by monopolizing the world market for the design and construction of float glass plants. Specifically, the Complaint alleges that, without sufficiently valuable intellectual property rights and through a network of bilateral patent and know-how license agreements and various understandings with most other float glass manufacturers in the world, defendants:

(a) allocated and divided territories for, and limited the use of, float glass technology worldwide;

(b) interpreted and enforced the territorial and use restrictions in the license agreements so that their combined effect prevented competitors from using or developing competing float glass technology;

(c) required competitors to prove that all of the licensed technology had become publicly known before being relieved of the territorial and use restrictions;

(d) imposed and enforced restrictions on competitors' ability to sublicense float glass technology;

(e) imposed and enforced reporting and grant-back provisions in the license agreements;

(f) imposed and enforced restrictions on exports of glass by licensees from and to the United States; and

(g) continued enforcement of the territorial, use, and sublicense restrictions indefinitely, even after no further licensing royalties were payable and the licensed patents had expired.

The Complaint also alleges that Pilkington has monopolized the world market for the design and construction of float glass plants through license agreements that impose unreasonable restrictions on licensees and by other predatory and exclusionary conduct. Finally, the Complaint alleges that the conduct described above has had and continues to have direct, substantial, and reasonably foreseeable adverse effects on U.S. export trade and commerce in providing services and related equipment and materials for the design and construction of float glass plants outside the United States.

The prayer for relief seeks: (1) a declaration that the provisions in Pilkington's license agreements with float glass manufacturers that have the purpose or effect of limiting or restricting (a) the territory in which a manufacturer may make or sell float glass, or (b) the use of float glass technology Pilkington originally disclosed to that manufacturer, or derived therefrom, are illegal and unenforceable; (2) an injunction against defendants' enforcing any such provision; (3) an injunction against defendants' (a) interfering with the efforts of any person (i) in this country to provide or perform services for the

design or construction of float glass plants anywhere in the world, or (ii) anywhere in the world to provide or perform services for the design or construction of float glass plants in the United States (including representing that such services would violate or infringe defendants' intellectual property rights), (b) interfering with the design, construction, or operation of any such plant or the sale or shipment of glass from those plants, or (c) monopolizing or attempting to monopolize the market for the design and construction of float glass plants; and (4) costs.

B. The Technology Market Involved

Flat glass includes glass formed in a flat shape or bent or curved for further fabrication and is used principally for windows in dwellings and commercial buildings, automobile windshields and other glass parts, architectural products, and mirrors. Almost all flat glass currently sold worldwide is made by the "float" process, which involves floating molten glass on the surface of a bath of molten metal, usually tin, which is sealed with a protective atmosphere. In a continuous process, molten glass is delivered to one end of the tin bath and is removed at the opposite end as a continuous ribbon of flat glass after cooling until it is rigid enough to retain its shape during removal.

Commercial float glass manufacture requires relatively large-scale, single-purpose plants that are not efficiently

convertible to other uses; and other manufacturing facilities are not efficiently convertible to float glass production. The cost of designing and constructing a typically-sized float glass plant, including equipment, materials, and construction labor, is in the range of $100 to $150 million. During the years 1984-91, 55 new float plants were designed, built, and placed in service worldwide; of those, nine are in North America, including seven in the United States.

Between now and the end of the century, 30 to 50 new float glass plants are planned or projected worldwide, amounting to expenditures of as much as $5 billion. Many are expected to be built in developing countries, where contracts are likely to be awarded to outside bidders for plant design, engineering, construction, and construction supervision services. Such services often include the specifying, ordering, or procuring of process equipment and materials used in such plants.

Persons in the United States would compete, if not restrained, for the award of contracts to provide float glass design and construction services. To the extent such persons successfully compete for contracts to design and construct float glass plants to be built outside the United States, the resulting U.S. export trade or commerce would generate substantial domestic economic activity, including substantial opportunities for domestic providers of engineering and design services, equipment fabricators, and materials

suppliers. It is estimated that, when a U.S. firm designs and supervises construction of a foreign plant costing roughly $100 million, approximately $35 to $50 million of that total eventually flows into the United States' economy in orders for domestic materials, equipment, and services. It is further estimated that, if not restrained, U.S. exporters of float glass technology may be expected to obtain between 10 percent and 50 percent of the 30 to 50 new plants planned or projected over the next several years. Thus, potential U.S. export sales for contractors, fabricators, and suppliers could amount to $500 million to $2.5 billion.

II.

THE PRACTICES AND EVENTS GIVING RISE TO THE ALLEGED SHERMAN ACT VIOLATIONS

A. Licensing Scheme

1. Background

Virtually all commercial flat glass was produced either by the old sheet glass process or the old plate glass process until 1962. In the late 1950s, Pilkington developed the first commercially successful float process for making flat glass, which eventually replaced both plate and sheet processes.1/ Pilkington obtained hundreds of patents

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1/ Pilkington's float process substantially reduced capital and operating costs, when compared with the plate process, by eliminating the need for grinding and polishing, but was not at first cost competitive with the sheet process. By 1970, float glass had almost completely replaced plate glass and, because of quality improvements and cost reductions, was competitive with sheet glass.

worldwide covering its version of the float process and developed a considerable body of related know-how.

Beginning in 1962, Pilkington entered into patent and know-how license agreements with all its principal competitors. Now, over 90% of flat glass worldwide is manufactured under a Pilkington license agreement. Eight licenses were granted in the United States to: AFG Industries, Inc. ("AFG"); Combustion Engineering, Inc. (now AFG); Ford Motor Co. ("Ford"); Fourco Glass Co. (also now AFG); Guardian Industries Corp. ("Guardian"); Pennsylvania Float Glass, Inc. (now Guardian); PPG Industries, Inc. ("PPG"); and Libbey-Owens-Ford Co. ("LOF") (now owned 80% by Pilkington and 20% by Nippon Sheet Glass Co. Ltd.).

2. The Agreements

The Pilkington float license agreements typically (a) provided for Pilkington to disclose all "float process" 2/ know-how it owned or controlled at the time, and

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2/ The license agreements very broadly defined "float processes" as "all processes ... used for ... production of flat glass ... with the aid of a bath of molten material ... with which the glass is in contact at any stage during its production," but excluding everything (i) prior to delivery of the glass to the bath, and (ii) after its emergence from the lehr (where it undergoes controlled cooling).

(b) granted non-exclusive licenses under (i) patents and patent applications of a specified country or countries, (ii) the "float process" know-how to be disclosed to the licensee under the agreement, and (iii) all patented and unpatented "float process" improvements Pilkington owned, controlled, or developed within a certain time period. Most licenses did not grant the right to sublicense. Also, improvement exchange provisions of the agreements required the licensee to grant-back to Pilkington (i.e., disclose and license) all patented and unpatented "float process" improvements the licensee owned, controlled, or discovered during the exchange period. The license agreements required both lump-sum payments and continuous royalties, and virtually all of them required that any disputes be settled by arbitration in London under the law of England.

The agreements imposed territorial and other use limitations by, in effect, "authorizing" each licensee to practice the licensed patents and use the licensed know-how only in a specified country or countries (usually the licensee's own domestic market), and only to make and sell flat glass.3/ The license agreements also imposed

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3/ While most agreements contained no express, contractual prohibitions against manufacturing in any particular country outside the specified, licensed countries, the grants are all limited licenses, "authorizing" manufacture of float glass only in the specified countries.

restraints on exports of glass from the specified territories. Those restraints applied to some U.S. licensees as well as to certain foreign licensees exporting to the United States. Export waivers have been granted by Pilkington in some cases, but were often limited as to time, location, and output.

Finally, the agreements imposed confidentiality and nondisclosure obligations on the licensees for all the know-how disclosed, unless and until the information or know-how becomes public knowledge. In practice, Pilkington placed the burden on the licensee to make any showing of public knowledge.

Today, virtually all of the original float license agreements themselves, as well as their improvement exchange and disclosure requirements, have terminated; the royalty obligations thereunder have become fully paid up; Pilkington's principal float glass patents have expired; and a substantial portion of its related know-how has become publicly known. Yet, the territorial and use restrictions, the confidentiality and nondisclosure obligations, the prohibition on sublicensing, and the arbitration clause and choice of law provision remain in full force and effect insofar as they apply to both licensed original know-how and unpatented improvements, most of which the world's flat glass producers have been using for decades.

As a result of the continuing restrictions in the agreements, existing licensees, including those in the United States, cannot design and build new float plants, or sublicense independent third parties to do so, outside their licensed "territories" without Pilkington's permission. Moreover, innovations in designs and technology that improve float process efficiency and float glass quality are important advantages in competing for contracts to design and construct (or supervise construction of) float glass plants; thus, geographically limiting the opportunities for economic exploitation of such innovations not only reduces the effectiveness of such competition but also reduces the incentives for innovation.

The adverse impact of the continuing license restrictions is substantial. Since Pilkington has no intellectual property rights of substantial value, the restraints are neither ancillary nor reasonably necessary to any legitimate purpose or transaction, and are, therefore, unreasonable restraints on trade within the meaning of Section 1 of the Sherman Act, 15 U.S.C. § 1.

3. Current Status of Licenses

There are over 60 Pilkington float license agreements. Most of them contain no authorization for the licensee to manufacture or sublicense outside its original territory now or at any time in the future.

A small number of agreements provide that "the territorial and other limitations on use cease to apply" after a period of time (usually 30 years after commencement of royalty payments but, in any case, not before the agreement terminates and the licenses granted thereunder become paid up). Such licenses are held by just three companies (other than Pilkington and its subsidiaries or affiliates). In the absence of the stipulated Final Judgment, after 1996, only these three companies will have worldwide rights to manufacture on their own and to sublicense more than 50 percent-owned subsidiaries without any additional royalty or lump-sum payment to Pilkington.4/

In sum, in the absence of the stipulated Final Judgment, the vast majority of current and former Pilkington licensees (who together make up the bulk of those competitors capable of providing float glass plant design and construction services) continue to be restrained from either manufacturing glass or sublicensing (selling) glass technology outside their original territories.

4/ But absent the stipulated Judgment, even those rights will not allow these three companies to compete effectively in most developing countries, where the future market is for new float plants, because of ownership limitations there that require, as a legal or practical matter, a domestic company to have majority ownership of new manufacturing ventures.

B. Litigation

Pilkington has routinely used litigation, and threats of litigation, to enforce its anticompetitive license restrictions. On several occasions, Pilkington has actually sued or brought arbitration proceedings against its American float glass licensees. In 1983, Pilkington sued its U.S. licensee, Guardian Industries, alleging that Guardian had improperly used and disclosed Pilkington's proprietary know-how in building a float glass plant in Luxembourg. After an adverse preliminary ruling by the court, Pilkington agreed to settle its claims on terms favorable to Guardian, permitting Guardian to construct float glass plants outside its previously-prescribed territory in return for Guardian's agreement to preserve the confidentiality of Pilkington's float technology.

Pilkington more successfully asserted claims against PPG in 1978 and again in 1985. In a 1985 arbitration concluded in 1992, Pilkington was able to enforce its 1962 license agreement with PPG and to recover damages from PPG stemming from PPG's construction of a float glass plant in China in the early 1980s. The arbitrators determined that, while much of Pilkington's alleged secret know-how was publicly known by 1985, PPG had failed to prove that 45 specific items were publicly known. The arbitrators did not consider the question of whether any of those items were valid trade secrets.

Also in the early 1980s, Pilkington sued U.S. licensee AFG over unpaid royalties relating to AFG's operation of float glass plants constructed using AFG's own technology. The case was settled in 1985, resulting in substantial limitations on AFG's ability to use and sell the disputed technology.

C. Other Exclusionary Conduct

The evidence demonstrates that Pilkington acted to restrict competition and control output. Pilkington licensed its principal competitors, which had the effect of minimizing the likelihood of their developing competing float glass technologies. At the same time, Pilkington turned down requests for float glass licenses from persons who were not already flat glass producers. The territories to which each licensee was limited by its float license agreement generally corresponded to the territories in which it operated prior to entering into that agreement. Thus, Pilkington's network of bilateral patent and know-how licenses, containing territorial and other use limitations, as well as confidentiality obligations, provided a framework for Pilkington to control the worldwide market for float glass plant design and construction services. The evidence also indicates Pilkington's effort to coordinate activities of certain of its licensees, and reflects a shared or common

interest among certain licensees to limit entry by competing technologies.

Pilkington exercised its right to grant or deny licenses not only in its own self-interest to avoid direct competition, but also in ways designed to benefit licensees in their territories. When Pilkington did grant float licenses, it frequently did so only to firms controlled by an existing licensee or to a joint venture of existing licensees.

One of Pilkington's goals in deciding whether to license, and in imposing territorial/export restraints when it did, was to control price, capacity, and output of flat glass. Pilkington sometimes reached separate understandings with licensees who exceeded, or threatened to exceed, the territorial or other limitations imposed by their licenses. By discouraging or challenging the construction of new float plants outside any licensee's original, assigned territory, Pilkington sought to maintain control over glass output and the sale or disclosure of float technology, for its own benefit, as well as that of the other licensees. Pilkington also tried to dissuade flat glass distributors and suppliers of materials and equipment used in building float plants from dealing with non-licensees and threatened reprisals if they did.

Pilkington reserved for itself certain markets, and turned down requests for licenses in those markets, including requests from existing float licensees, for the two-fold

purpose of exploiting those markets itself, and controlling exports from those markets to other parts of the world. Pilkington attempted to achieve this goal by coordinating the shipment of glass to specific customers through certain licensees and, indirectly, its U.S. subsidiary LOF.

III.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT AND ITS ANTICIPATED EFFECT ON COMPETITION

The United States and the defendants have stipulated that the Court may enter the proposed Final Judgment at any time after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h). Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(e), the proposed Final Judgment may not be entered unless the Court finds entry is in the public interest. Section VIII of the proposed Final Judgment sets forth such a finding.

The proposed Final Judgment provides for affirmative and injunctive relief, which is expected to eliminate any residual anticompetitive effects of the restrictive license agreements and other conduct challenged by the Complaint. Specifically, consistent with the United States' antitrust jurisdiction under the Foreign Trade Antitrust Improvements Act of 1982, 15 U.S.C. § 6a, the Final Judgment would eliminate all territorial and use limitations Pilkington imposed on its U.S. licensees and allow them to manufacture

on their own or sublicense any third party to do so anywhere in the world, free of charge, using the float technology disclosed and licensed to those licensees. Such manufacturing and sublicensing rights would be subject only to limited confidentiality obligations imposed under certain narrow and specific conditions.

The Judgment also would provide, in effect, a similar "safe harbor" for any other American individual or firm who is not a Pilkington float glass licensee to use any float technology in its possession without liability to Pilkington. Further, the Judgment would enjoin certain conduct having the purpose or effect of restricting exports of float glass to the United States or limiting the use of float technology or manufacture of float glass in North America. Finally, the Judgment would enjoin the defendants from making certain adverse representations about U.S. licensees or non-licensees and would require the defendants to disclose to those American entities the results of any adjudication of Pilkington's alleged trade secrets.

A. Section IV.A.: U.S. Licensees

The injunctive provisions of this subsection apply to Pilkington's U.S. float glass licensees, defined as any person or entity incorporated or having its principal place of business in the United States and having entered into any agreement with Pilkington prior to the stipulation date for

the licensing of or the right to use float glass technology. It does not apply to any subsidiary (at least 50 percent owned), affiliate (less than 50 percent owned), or parent of any U.S. licensee,5/ or to any person while it is a subsidiary, affiliate, or parent of any defendant.

Specifically, subject to a narrow exception and certain conditions noted below, subsection IV.A.1. would prohibit defendants from entering into, maintaining, enforcing, or claiming any right under any agreement or understanding that restrains in any way a U.S. licensee from using or sublicensing anywhere in the world the float glass technology Pilkington disclosed and licensed to it, or that requires such licensee to pay royalties or lump sum or line fees for such use or sublicensing. Also, subject to the same exception and conditions, subsection IV.A.2. would prohibit defendants from asserting against a U.S. licensee any alleged proprietary know-how rights in the same float technology disclosed and licensed to that licensee.

The exception and conditions mentioned above are contained in subsections IV.A.3. and IV.A.4. Subsection

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5/ This exclusion is designed to prevent a foreign entity from claiming the benefits of specific provisions of the proposed Final Judgment designed for U.S. entities simply by acquiring, being acquired by, or becoming affiliated with any American entity. United States and foreign entities are treated differently under the proposed Judgment (see Section IV.C.) because the jurisdictional reach of the U.S. antitrust laws is limited.

IV.A.3. provides that defendants may assert a breach of confidentiality claim against a U.S. licensee concerning licensed technology, only if the claim (i) pertains to a trade secret under applicable law, and (ii) is based on the U.S. licensee's failure either to make lawful and commercially reasonable efforts itself to maintain confidentiality or to require by contract anyone to whom it transfers such technology to do so. Subsection IV.A.4. specifically preserves whatever claim a defendant may have for an account of profits, damages, or any other monetary relief asserted in any proceedings begun before the stipulation date and based on conduct occurring before that date. However, this exception does not allow defendants to bring future actions for monetary relief, whether or not based on prior conduct.

Finally, subsection IV.A.2., again subject to the same exception and conditions described above, also prohibits defendants from asserting against a U.S. licensee any alleged proprietary know-how rights in float technology acquired from any source other than Pilkington, unless defendants have a good faith argument that each item, or combination of items, of such technology (i) is a trade secret under applicable law, and (ii) has been acquired in breach of confidentiality or otherwise unlawfully.

B. Section IV.B.: U.S. Non-Licensees

The injunctive provisions of this subsection apply to any person or entity domiciled or incorporated in the United States and having its principal place of business here, but who has not entered into a float glass license agreement with Pilkington. Such persons or entities fall into two general categories: (i) non-licensees who are nevertheless under some contractual confidentiality or noncompete obligation for Pilkington's benefit (e.g., employees, contractors, suppliers, consultants, etc.), and (ii) persons who are not under any such obligation.

As to the first category, subsection IV.B.1. of the proposed Judgment prohibits defendants from entering into or enforcing any agreement containing such a confidentiality obligation or covenant not to compete that is longer in duration or greater in scope than permitted under applicable law. That subsection, however, provides that entering into or enforcing such an agreement will not constitute contempt of the Judgment if defendants have a good faith argument that it is permitted by applicable law.

Subsection IV.B.2. of the proposed Final Judgment applies to all U.S. non-licensee competitors and potential entrants into the float glass technology market. It prohibits defendants from asserting against such a person alleged proprietary know-how rights in float glass technology disclosed and licensed by Pilkington to any U.S. licensee,

unless each of several specific conditions are met. First, defendants must have a good faith argument that each item, or combination of items, of such technology asserted (i) is a trade secret under applicable law, and (ii) has been acquired in breach of confidentiality or otherwise unlawfully. Second, within 14 days after any such assertion, defendants must (i) make a written showing to the Department of Justice supporting both arguments referred to above, and (ii) enumerate and describe each such item or combination of items asserted, to distinguish them from information not a trade secret, on a list submitted to both the Department and the U.S. non-licensee against whom they are asserted. Finally, in order for Pilkington to assert a claim, such U.S. non-licensee must be unwilling to make lawful and commercially reasonable efforts to maintain the confidentiality of those items or combination of items for which it has received actual notice of defendants' claim, and for which they have made the requisite showing.

C. Section IV.C.: Foreign Licensees

Subject to two conditions noted below, subsection IV.C. of the proposed Judgment prohibits defendants from entering into, maintaining, enforcing, or claiming a right under any agreement or understanding that in any way restrains a foreign float glass licensee from using or sublicensing float glass technology in North America. Further, defendants may

not charge any fees for the use or sublicensing in North America of float glass technology disclosed by Pilkington to any U.S. licensee, and may not enforce any confidentiality claims for the use or sublicensing of such technology, unless defendants have a good faith argument that each item or combination of items of such technology involved is a trade secret. However, defendants may enforce confidentiality claims against foreign licensees' use or sublicensing in North America of float glass technology not disclosed to any U.S. licensee, and may charge them commercially reasonable and non-discriminatory fees for the use of such technology.

D. Other Provisions

Subsection IV.D. of the proposed Judgment prohibits defendants from asserting any proprietary know-how rights or enforcing any agreements with the intent of restraining or limiting the amount of exports of float glass to the U.S. Subsection IV.E. prohibits defendants from entering into, maintaining, or enforcing any agreement that fixes, maintains, or stabilizes prices for the use of float glass technology in the U.S. Subsection IV.F. prohibits defendants from representing to any person anywhere in the world that the person's own use, or its financing, promoting, or facilitating another person's use, of float glass technology acquired directly from any U.S. licensee or U.S. non-licensee would result in any liability to defendants.

Subsection IV.G. requires defendants to identify to the Department, and to all U.S. licensees and all U.S. non-licensees who request it, the float glass technology found to be public knowledge in the arbitration proceedings concluded in August 1992 between Pilkington and PPG. This subsection requires a similar identification for any such technology disclosed and licensed to any U.S. licensee that Pilkington acknowledges in writing to be in the public domain or that is so held to be in any arbitration or court proceeding to which Pilkington is a party.

E. Effect On Competition

The relief in the proposed Final Judgment is designed to ensure that: (1) Pilkington's U.S. licensees, principally PPG, Ford, Guardian, and AFG, will be free of the territorial and use restrictions in their 20 to 30-year-old license agreements to compete for the design and construction of float glass plants abroad as well as in the U.S; and (2) U.S. firms with the requisite expertise that never were Pilkington licensees but currently are attempting to enter the market will be free to do so without unreasonable restraint or interference. The effective removal of the license restrictions and the "safe harbor" provided by the proposed Final Judgment should encourage and facilitate others with the requisite expertise, including former employees of Pilkington and its licensees, to enter the market. It is

expected that the combination of unrestrained existing manufacturers and new entrants will result in improved glass processes at lower prices.

IV.

REMEDIES AVAILABLE TO 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 attorney's 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), the Judgment has no prima facie effect in any subsequent lawsuits that may be brought against the defendants in this matter.

V.

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED 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 to Gail Kursh, Chief, Professions and Intellectual Property Section, U.S. Department of Justice, Antitrust Division, 555 4th Street, N.W., Room 9903, Washington, D.C. 20001, within the 60-day period provided by the Act. These comments, and the

Department's responses, will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free, pursuant to a stipulation signed by the United States and defendants, to withdraw its consent to the proposed Judgment at any time prior to entry. Section I of the proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for modification, interpretation, or enforcement of the Final Judgment.

VI.

DETERMINATIVE MATERIALS/DOCUMENTS

No materials or documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), were considered in formulating the proposed Final Judgment.

VII.

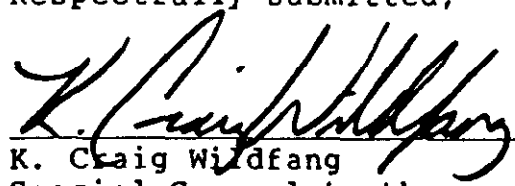
ALTERNATIVE TO THE PROPOSED FINAL JUDGMENT

The alternative to the proposed Final Judgment is a full trial on the merits. That alternative was rejected because the relief provided in the proposed Judgment will fully and effectively open the market to competition, as well as eliminate any residual effects of the alleged violations, and

would produce immediate positive competitive impact; litigation would involve obvious risks as well as substantial costs to the United States; and preparing the case for trial, trying it, and disposing of appeals after trial might delay obtaining any relief for several years.

Dated: May 25, 1994

Respectfully submitted,



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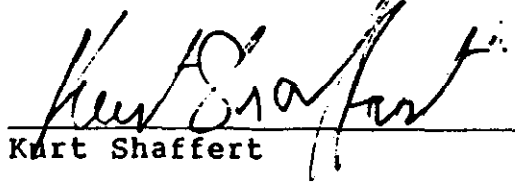

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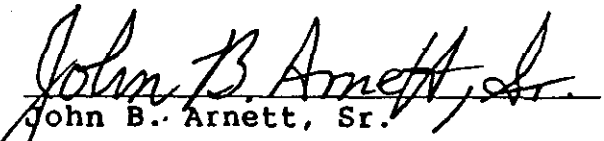

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this day of May, 1994 he caused true and correct copies of the foregoing Complaint, Stipulation, Competitive Impact Statement, and Government's Motion Under Local Rule 1.2(e)(1) To Assign This Case With Above-Named Related Cases to be served by mail upon the following:

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FORM ATR-177
MAR. 88