

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Civil No. 81-70005
NATIONAL FINANCE ADJUSTERS,	)	
INC.,	)	
	)	
Defendant.	)	

COMPETITIVE IMPACT STATEMENT

This competitive impact statement, relating to the proposed consent judgment submitted for entry in this civil antitrust proceeding, is filed by the United States pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b) (1976).

I

NATURE AND PURPOSE OF THE PROCEEDING

On January 5, 1981, the United States filed a civil antitrust Complaint alleging that National Finance Adjusters, Inc. ("NFA"), a national association of repossessioners located in Detroit, Michigan, and its co-conspirators had conspired to fix prices, restrict territories and limit membership in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1 (1976).

The Complaint alleges that, beginning at least as early as 1975, and continuing to the date of the filing of the complaint in the action, the defendant and various co-conspirators engaged in a nationwide combination and conspiracy to agree on, prepare, publish in defendant's directory,

disseminate and encourage members to adhere to, fee schedules for repossession services; to restrict membership to one or few members in certain geographic areas; to restrict the area in which each of defendant's members could advertise its repossession services; and to establish arbitrary and unreasonable membership restrictions.

The Complaint asks the Court to enjoin and restrain the defendant from such activities in the future.

Entry by the Court of the proposed Final Judgment will terminate this litigation. The Court will retain jurisdiction for possible future proceedings which might be required to interpret, modify or enforce the provisions of the proposed Final Judgment.

## II

### NATURE OF THE ALLEGED VIOLATION

Repossessors, or adjusters as they are sometimes called, provide services for banks, credit unions and other lenders that seek to recover merchandise sold under a security agreement. During the period covered by the Complaint the defendant had member-repossessors located throughout the United States.

The Complaint alleges that the defendant and co-conspirators agreed to eliminate price and other forms of competition in the trade and commerce of providing repossession services. The Complaint alleges further that they did, among other things, the following: (a) agreed to, prepared, published in the NFA directory, disseminated and encouraged members to adhere to fee schedules for repossession services; (b) restricted membership in NFA to one or few members in certain geographic areas; (c) restricted the

area for which each NFA member could advertise its services; and (d) established arbitrary and unreasonable membership restrictions.

### III

#### EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and the defendant 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, 15 U.S.C. §§ 16(b)-(h) (1976). The proposed Final Judgment states that it constitutes no admission by any party with respect to any issue of fact or law.

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 Final Judgment is in the public interest. Accordingly, Section XVIII of the proposed Final Judgment states that entry of this Final Judgment is in the public interest.

The proposed Final Judgment contains two principal forms of relief. First, the defendant is enjoined from engaging in the behavior that constituted the conspiracy alleged in the Complaint. Second, the proposed Final Judgment places affirmative burdens on the defendant directed toward preventing such behavior.

#### A. PROHIBITED CONDUCT

Under Section IV of the proposed Final Judgment the defendant is restrained from (1) fixing any price schedule or list for repossession services; (2) advertising any price schedule or list for repossession services; (3) publishing any price schedule or list for repossession services; (4) participating in any communications with representatives of other repossession associations that relate to any price schedule or list for repossession services; or (5) engaging in any conduct the effect of which is to influence the formulation of any price schedule or list for repossession services.

Under Section VI of the proposed Final Judgment the defendant is prohibited, with two exceptions, from publishing any other reference to prices or fees for repossession services in its directory or other publications.

Under Section VII of the proposed Final Judgment the defendant is enjoined from expelling any member from NFA membership or from denying or delaying any application for NFA membership on the basis of (1) the population or other demographic information of a member's or an applicant's service area, or (2) the number of other NFA members or applicants who operate or may operate in that service area.

Under Section IX of the proposed Final Judgment the defendant is enjoined from any activity the purpose or foreseeable effect of which is to allocate, protect, limit or otherwise influence the service area or territory in which any of its members operate or advertise that they operate.

Under Section XII of the proposed Final Judgment the defendant is enjoined from establishing or maintaining unreasonable fees for NFA membership.

B. DEFENDANT'S AFFIRMATIVE OBLIGATIONS

Under Section V of the proposed Final Judgment the defendant is required to publish in a prominent manner in the prefatory section of each NFA membership directory or other similar publication, a statement of conformity with the prices or fees provisions of the consent decree.

Under Section VIII of the proposed Final Judgment the defendant is required to eliminate any restrictions on NFA members concerning the manner or extent of advertising their service area in any advertisement publication.

Under Section X of the proposed Final Judgment the defendant is required to eliminate certain prior NFA membership requirements.

Under Section XI of the proposed Final Judgment the defendant is ordered to admit any applicant for NFA membership who meets the following requirements: (1) ability to obtain and retain, in the commercial market, reasonable fidelity bonds; (2) licensure under all applicable state and local licensing laws; (3) certification that he or she has not been convicted of a felony within a period of up to ten years prior to his or her application for membership; (4) one year of experience as an active reposessor; and (5) a principal office location specifically for his or her repossession business during NFA membership.

Under Section XIII of the proposed Final Judgment the defendant is ordered to publish in the prefatory section of each NFA membership directory or other similar publication, certain information regarding the membership application process.

Sections XIV and XV of the proposed Final Judgment require the defendant to establish an antitrust compliance program which must include annual reporting to the Department of Justice and notification of this Judgment to each of its officers, directors, employees and members.

Under Section XVI of the proposed Final Judgment, jurisdiction is retained by the Court for purposes of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the

construction or implementation of this Final Judgment, for the modification of any of the provisions, for the enforcement or compliance, and the punishment of violations. Further, under Section XVII, the proposed Final Judgment shall remain in effect until ten (10) years from the date of entry.

C. SCOPE OF THE PROPOSED JUDGMENT

The proposed Final Judgment applies to the defendant and to its officers, directors, members, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with the defendant who have received actual notice of this Final Judgment by personal service or otherwise.

D. EFFECT OF THE PROPOSED JUDGMENT ON COMPETITION

The terms of Sections IV and VI of the Judgment are designed to ensure that the defendant's members will act independently in determining the prices or fees to charge for repossession services. Accordingly, the affirmative obligations of Sections V and XIV are directed toward informing the defendant's clients, members, employees and others of this Final Judgment and their obligations under the decree not to engage in the type of behavior alleged in the Complaint.

The terms of Sections VII and IX of the Judgment are designed to ensure that the defendant will not unfairly or unreasonably restrict NFA memberships and geographic territories in which any of its members operate or advertise that they operate. Accordingly, the affirmative obligations of Sections VIII, X, XI, XIII and XIV are directed toward the establishment of fair, reasonable and objective criteria

for admission to membership in any geographic area, and advertising by members.

Compliance with the proposed Final Judgment should prevent collusion among the defendant, its members and competitors in determining the prices or fees to charge for repossession services and in unreasonably restricting NFA memberships and geographic territories in which NFA members operate or advertise that they operate.

#### 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(b).

#### V

##### PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED CONSENT JUDGMENT

The proposed Final Judgment is subject to a stipulation between the Government and the defendant which provides that the Government may withdraw its consent to the proposed Judgment any time before the Court has found that entry of the proposed Judgment is in the public interest. By its terms, the proposed Judgment provides for the Court's retention of jurisdiction of this action in order to permit any

of the parties to apply to the Court for such orders as may be necessary for the modification of the Final Judgment.

As provided by the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), any person wishing to comment upon the proposed Judgment may, for a sixty-day period subsequent to the publishing of this document in the Federal Register, submit written comments to the United States Department of Justice, Attention: John W. Poole, Jr., Chief, Special Litigation Section, Antitrust Division, Washington, D.C. 20530. Such comments and the Government's response to them will be filed with the Court and published in the Federal Register. The Government will evaluate all such comments to determine whether there is any reason for withdrawal of its consent to the proposed Judgment.

## 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 Final Judgment to be of sufficient scope and effectiveness to make a trial unnecessary because it provides for all the relief prayed for in the Complaint.

## VII

### DETERMINATIVE MATERIALS AND DOCUMENTS

No materials or documents were considered determinative by the United States in formulating the proposed Final



Judgment. Consequently, none are being filed pursuant to  
the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b).

Respectfully submitted,

*Charles Jerome Ware*  
CHARLES JEROME WARE

*Terrence F. McDonald*  
TERRENCE F. MCDONALD *by CJW*

*Steven B. Kramer*  
STEVEN B. KRAMER *by CJW*

Attorneys  
Antitrust Division  
Department of Justice  
Washington, D.C. 20530  
(Telephone: (202) 633-2438)

Dated: