

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

BENEFICIAL CORPORATION;

HLG INC.;

BEATRICE FOODS CO.;

and

SOUTHWESTERN INVESTMENT CO.

Defendants.

Civil Action No. 79C 3550

Filed: September 24, 1979

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16 (d)-(h), P.L. 93-528 (December 21, 1974)) the United States of America hereby files this Competitive Impact Statement relating to the proposed Final Judgment in this civil antitrust proceeding.

I.

Nature and Purpose of the Proceeding

This is a civil action by the United States against Beneficial Corporation, HLG Inc., Beatrice Foods Co., and Southwestern Investment Co. The complaint, which was filed on August 29, 1979, alleged that the proposed acquisition by Beneficial, through HLG, of all of the stock of Southwestern from the Beatrice Foods Co.

would violate Section 7 of the Clayton Act because competition among finance companies in the making of direct cash loans would be lessened. The case was brought to enjoin Beneficial from acquiring Southwestern from Beatrice Foods Co.

## II.

### The Nature of the Alleged Violation

Finance companies are engaged primarily in the business of making direct cash loans and purchasing retail installment loans. Finance companies make direct cash loans to individuals, usually for noncommercial purposes and usually repayable in equal periodic installments. Finance companies which grant direct cash loans are licensed, regulated and supervised by agencies of the states in which they operate. As of September 30, 1978, the total amount of direct cash loans outstanding made by finance companies in the United States totaled \$23.569 billion.

Beneficial is the fourth largest independent finance company \*/ in the United States, with total capital funds of \$986.5 million as of December 31, 1978. It operates more than 1900 offices in 49 states, Puerto Rico, Canada, Australia, Japan, West Germany, and the United Kingdom. As of December 31, 1978, Beneficial had total direct cash loans outstanding of approximately \$3.199 billion.

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\*/ An independent finance company is a finance company other than one whose principal activity consists of financing the purchase of products or services sold by an affiliated company.

Southwestern is the twenty-fourth largest independent finance company in the United States, with total capital funds of \$87.6 million as of December 31, 1978. It operates 127 offices in 10 states. As of December 31, 1978, Southwestern had total direct cash loans outstanding of approximately \$102 million.

The line of commerce involved in this transaction is the making of direct cash loans by finance companies. Finance companies are the only type of business entity whose primary purpose is the making of direct cash loans to individuals. While other financial institutions such as commercial banks, savings and loan associations, and credit unions make some personal loans to consumers, these institutions primarily engage in other financial activities. All of them, unlike finance companies, are depository institutions; that is, they accept demand and/or savings deposits which serve as a major source of their funds. Commercial banks engage in a full range of financial activities, including lending to business entities. Savings and loan associations primarily grant first mortgages for the purchase of residential properties. Credit unions are limited to lending to their own members, all of whom must have a common affiliation which is usually based on employment. All of these institutions charge lower interest rates for direct cash loans than finance companies. Interest rates are often regulated by state statutes which almost universally permit finance companies to charge the highest rate of interest of any lender. As a result, finance companies are uniquely capable of lending to high risk consumers and making direct cash loans to

individuals who do not have alternative source of credit. Thus, for a substantial group of customers, finance companies do not face competition from other financial institutions.

Finance companies conduct their direct cash loan business through offices located in particular communities. While the size of the area served by a particular office will vary depending upon population and geographic characteristics, generally a particular city is a reasonable approximation of the geographic area served by a finance company.

The complaint alleged that the effect of the proposed acquisition of Southwestern by Beneficial, through HLG, may be substantially to lessen competition and to tend to create a monopoly in the granting of direct cash loans in various communities located in the states of Kansas, New Mexico, and Texas in violation of Section 7 of the Clayton Act. In each of more than 25 communities Beneficial and Southwestern have 10 percent or more of the finance company offices. The cities of Albuquerque, New Mexico; Abilene and Lubbock, Texas; and Leavenworth, Kansas are among those communities. In addition, in the state of New Mexico, as of December 31, 1978, Beneficial had approximately 21 percent of the outstanding direct cash loans made by all finance companies in New Mexico, and Southwestern had approximately 8.3 percent for a combined total of approximately 29.3 percent. In Kansas and Texas, Beneficial and Capital have a combined total

in excess of 16 percent of the outstanding direct cash loans made by all finance companies in the state.

### III.

#### Explanation of the Proposed Final Judgment

The United States and the defendants have stipulated that a Final Judgment, in the form negotiated by the parties, may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act, provided that the United States has not withdrawn its consent. That stipulation provides that there has been no admission by any party with respect to any issue of law or fact. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, entry of the Final Judgment is conditioned upon a determination by the Court that it is in the public interest.

Section IV of the proposed Final Judgment orders Beneficial to divest itself of each Southwestern office listed in Appendix A of the Final Judgment. The Southwestern offices to be divested also are listed in Appendix A of this Competitive Impact Statement. Beneficial is required to sell all the receivables (i.e., the direct cash loans to individuals), and customer lists and, at the purchaser's option, all installment notes purchased from dealers arising from retail or wholesale sales, leases, and leasehold improvements for each Southwestern office listed in Appendix A. The Final Judgment would require Beneficial to divest itself of 26 Southwestern offices in 23 communities in five states.

Section IV (A) requires Beneficial to enter into a contract for sale of each office to be divested within six months from the date of entry of this Final Judgment. Section IV (B) requires Beneficial to consummate the sale of each office within one year from the date it enters into the contract for sale required by Section IV (A). Beneficial may not reacquire any of the Southwestern offices divested pursuant to the Final Judgment, except by enforcing a valid security interest in a Southwestern office obtained to insure payment from the purchaser. Any office reacquired in this manner must be divested within one year in accordance with the Final Judgment.

Section V of the proposed Final Judgment gives the government the right to object to the proposed sale of any of the Southwestern offices to be divested. If the government does object, Beneficial has six months from the date of the objection, or, if the Court sustains the objection, from the date of the Court's ruling, within which to enter into another contract of sale with a different purchaser.

Section VI of the proposed Final Judgment provides for the Court, upon the government's request, to appoint a trustee to sell each Southwestern office to be divested for which Beneficial has not entered into a contract of sale within six months of the entry of the Final Judgment or if any such contract of sale has not been consummated with one year from the date it was entered into. The trustee has the authority to dispose of any office, at whatever price and terms obtainable, subject to the approval of the Court.

Section VII of the proposed Final Judgment orders Beneficial to maintain the Southwestern offices to be divested as separate, going businesses and to continue normal business operations under the "Southwestern" name until each office is sold. Beneficial is also required to provide the financial, business, promotion and management assistance necessary to maintain the Southwestern offices to be divested as separate, going businesses. In addition, Beneficial may not knowingly take any action which would reduce the amount of receivables in any Southwestern office to be divested on the date this Final Judgment is submitted to the Court, except that Beneficial may continue normal operations at any of its other consumer finance offices. Beneficial is also prohibited from hiring any office manager or other employee of any of the Southwestern offices to be divested for a period of six months from the date of sale. Section VII (C) requires Beneficial to provide the government with a monthly tabulation showing the amount of receivables outstanding at each Southwestern office to be divested.

Section VIII of the proposed Final Judgment requires Beneficial to provide the government, on a periodic basis, with a record of its efforts to sell each Southwestern office to be divested.

Section III of the proposed Final Judgment expressly provides that its terms apply to each defendant, its Board of Directors, its officers, agents and employees, its subsidiaries, affiliates, successors, and assigns, and to all other persons in active concert or participation with any of them who receive notice of this Final Judgment by personal service or otherwise.

Under Section IX of the proposed Final Judgment, the Department of Justice would have access upon reasonable notice to the records and personnel of the defendants in order to determine the defendants' compliance with the provisions of the Final Judgment. Under Section X of the proposed Final Judgment, jurisdiction is retained by the Court for the purpose of enabling any party to apply for such orders or directions as may be necessary to carry out the Final Judgment, for modification of any of its provisions, or for punishment of violations of its provisions.

#### IV.

##### Remedies to Private Plaintiffs

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured in his business or property as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages such person has suffered as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment in this proceeding will neither impair nor assist the bringing of any such private antitrust action.

Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16 (a)), the proposed Final Judgment may not be used as prima facie evidence in any subsequent private lawsuit which may be brought against the defendants since it is a consent judgment that will be entered before any testimony has been taken.

V

Procedures Available for Modifications  
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 Kenneth C. Anderson, Chief, Special Regulated Industries Section, Department of Justice, Safeway Building, Room 504, Washington, D.C., 20530, within the 60-day period provided by the Act. These comments and 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, which 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 of the Final Judgment is necessary.

VI

Alternatives to the Proposed  
Final Judgment

The proposed Final Judgment requires Beneficial to divest 26 Southwestern offices in 23 communities in five states. The divestiture of these Southwestern offices will eliminate the anti-competitive effects of the proposed acquisition of Southwestern by Beneficial in each of the relevant geographic markets where both Beneficial and Southwestern are substantial competitors in the making of direct cash loans to individuals. Since the relief obtained in the Final Judgment eliminates the anticompetitive

effects of the proposed acquisition in each geographic market, it is substantially similar to the relief the Department of Justice would expect to obtain after a trial on the merits. Although most provisions of the proposed judgment were revised and refined in the course of the negotiations, no relief substantially different in kind was considered by the government.

VII

Determinative Documents

There are no materials or documents which the government considered determinative in formulating this proposed Final Judgment. Therefore none are being filed along with this Competitive Impact Statement.

  
Seymour H. Dussman

  
James H. Phillips

  
Gordon G. Stoner

Attorneys, Department of Justice

Dated: September 24, 1979

APPENDIX A

OFFICES OF SOUTHWESTERN INVESTMENT COMPANY

Kansas

Leavenworth  
331 Delaware, 66048

Junction City  
111 West 7th St., 66441

New Mexico

Albuquerque  
4711 Lomas Blvd. NE, 87103

Alamogordo  
702 Tenth Street, 88310

Artesia  
212 South 4th, 88210

Carlsbad  
213 North Canyon, 88220

Clovis  
800 Mitchell, 88101

Farmington  
634 W. Main Street, 87401

Farmington  
3030 E. Main St., A-4, 87401

Hobbs  
324 North Turner, 88240

Lovington  
819 South Main, 88260

Oklahoma

Bartlesville  
1200 SE Frank Phillips

South Dakota

Brookings  
1453 6th Street, 57006

Huron  
1835 Dakota Ave. S.  
Box 35, 57350

South Dakota

Madison  
122 West Center St., 57042

Rapid City  
520 6th Street, 57701

Sioux Falls  
2803 West 41st St., 57101

Texas

Amarillo  
905 Taylor, 79105

Amarillo  
832 Martin Rd., 79107

Borger  
924 N. Main Street, 79007

Corpus Christi  
4518 Autotown Drive, 78412

Houston  
1116 N. Shepherd, 77009

Kingsville  
429 East Kleberg, 78363

Midland  
1101 N. Midkiff St., 79701

San Antonio  
1010 SW Military Drive, 78221

San Antonio  
225 East Elmira, 78293