

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 PACIFIC DUNLOP HOLDINGS INC.; )  
 BECTON, DICKINSON AND COMPANY; and )  
 EDMONT, INC., )  
 )  
 Defendants. )

Civil No. 89-4522  
Filed: 6/16/89

COMPETITIVE IMPACT STATEMENT

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), 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 June 15, 1989, the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, 15 U.S.C. § 25, challenging the proposed acquisition of the United States assets of Edmont, Inc. ("Edmont"), a wholly owned subsidiary of Becton, Dickinson and Company ("BD"), by Pacific Dunlop Holdings Inc. ("PDH"). The complaint alleges that the proposed acquisition violates Section 7 of the Clayton Act, 15 U.S.C. § 18.

Both PDH and Edmont are major United States suppliers of various types of dipped supported and unsupported industrial gloves designed to protect hands from cuts and abrasions and environmental, chemical, and biological agents and/or to protect products from hand-borne contamination. Dipped unsupported industrial gloves are liquid proof and chemical resistant ("liquid proof") gloves that are made from latex (natural rubber) or a synthetic material such as nitrile, neoprene, or polyvinyl chloride ("PVC"); these gloves may be flock-lined, but do not employ any other lining. Dipped supported industrial gloves are made of cloth or other lining material coated with latex or a synthetic material such as those identified above; these gloves may or may not be liquid proof depending on whether they are designed to allow for hand ventilation.

The complaint names as defendants Edmont, PDH, and BD and alleges that the effect of the merger may be substantially to lessen competition among producers that sell in the United States the following types of industrial gloves: dipped unsupported nitrile gloves, liquid proof dipped supported latex gloves, liquid proof dipped supported nitrile gloves, liquid proof dipped supported neoprene gloves, and liquid proof dipped supported PVC gloves.

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the government withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations thereof.

## II

### EVENTS GIVING RISE TO THE ALLEGED VIOLATION

Under the terms of a Purchase and Sale Agreement dated February 13, 1989 between PDH and Edmont, PDH proposes to acquire all of Edmont's industrial glove operations in the United States. Under the Agreement, PDH is to pay a purchase price of approximately \$192 million and assume certain of Edmont's liabilities.

PDH and Edmont both produce for sale in the United States a broad line of industrial gloves. In 1988, PDH's total industrial glove sales in the United States were approximately \$26 million. Through its subsidiary Ansell Inc., PDH sells in this country unsupported nitrile gloves manufactured by its affiliate Ansell Glove Company Ltd. in the United Kingdom. Another PDH subsidiary, Ansell Granet Inc., produces at a plant in Snow Hill, North Carolina dipped supported gloves coated with latex, nitrile, neoprene, and PVC.

Edmont's total United States sales of industrial gloves were approximately \$65 million in 1988. It produces unsupported nitrile gloves at plants in Canton, Ohio and Juarez, Mexico, and liquid proof dipped supported gloves at other plants in Ohio, North Carolina, Louisiana, and Canada.

The complaint alleges that the production and sale of dipped unsupported nitrile gloves, of liquid proof dipped supported latex gloves, of liquid proof dipped supported nitrile gloves, of liquid proof dipped supported neoprene gloves, and of liquid proof dipped supported PVC gloves, each constitutes a line of commerce and relevant product market within the meaning of Section 7 of the Clayton Act. The several types of liquid proof dipped supported and unsupported industrial gloves each have differing degrees of suitability for the many uses for industrial gloves. As between liquid proof dipped supported and dipped unsupported industrial gloves, the former offer superior protection from cuts and abrasion, while the latter have superior tactile and dexterity properties. Within the unsupported and liquid proof supported categories, each type of coating material offers protection against certain chemicals or other toxic or corrosive substances superior to other types. A small but significant and nontransitory increase in the price of any of above identified types of industrial gloves is not likely to cause a significant number of customers to substitute any other type of industrial glove, or any other product.

For each of the above types of industrial gloves, firms that produce and sell that type in the United States compete with each other for sales throughout the country. The United States is, as alleged in the complaint, a section of the country and a relevant geographic market, within the meaning of Section 7 of the Clayton Act.

The complaint also alleges that the above markets for industrial gloves are highly concentrated and would become substantially more concentrated as a result of the proposed acquisition of Edmont by PDH. In 1988, total United States sales of dipped unsupported nitrile gloves were approximately \$28.7 million. Edmont and PDH, through its subsidiary Ansell Inc., are respectively the first and fifth largest competitors in this market; based on 1988 United States sales data, Edmont and PDH market shares are, respectively, about 43 percent and 4.4 percent. Based on market shares derived from United States sales of all firms in the market, the proposed acquisition would increase the Herfindahl-Hirschman Index ("HHI") by about 380 points to over 3200.

Total United States sales in 1988 of all dipped supported latex, nitrile, neoprene, and PVC gloves were approximately \$80 million. Edmont and PDH, through its subsidiary Ansell Granet Inc., are the second and third leading United States sellers of dipped supported latex gloves, with shares of 1988 sales of that type of glove at about 30 percent and 5 percent

respectively; the first and third leading United States sellers of dipped supported nitrile gloves, with shares of about 54 percent and 6 percent; the first and fourth leading United States sellers of dipped supported neoprene gloves, with shares of about 44 percent and 7.7 percent; and among the top five leading United States sellers of dipped supported PVC gloves, with shares of about 35 percent and 5.6 percent.

A number of producers of dipped supported latex, nitrile, neoprene, and PVC gloves make more than one type of such gloves, and most producers can make more than one type using the same production equipment. Further, all producers of dipped supported gloves can make both liquid proof and non-liquid proof gloves on the same equipment. Accordingly, for purposes of assessing the competitive structure of these markets, and thus analyzing the effect of the acquisition on competition in the markets, it is appropriate to aggregate the capacity resulting from all such equipment that can be used by producers to make more than one type of glove.

Based on 1988 United States sales of all dipped supported gloves, each of the above identified markets for liquid proof dipped supported gloves is highly concentrated and would become substantially more concentrated as a result of the proposed acquisition of Edmont by PDH. In each market, the proposed acquisition would increase the HHI by at least 300 points to over 2800.

As alleged in the complaint, successful entry into any of the above described United States markets for dipped supported and unsupported industrial gloves is difficult and time-consuming because of the cost and time required to perfect the production technologies, to construct necessary production facilities, and to develop the substantial distributor relationships necessary to compete effectively in the United States.

### III

#### EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States brought this action because the effect of the proposed acquisition of Edmont by PDH may be substantially to lessen competition, in violation of Section 7 of the Clayton Act, in the United States markets for the manufacture and sale of unsupported nitrile industrial gloves, liquid proof dipped supported latex industrial gloves, liquid proof dipped supported nitrile industrial gloves, liquid proof dipped supported neoprene industrial gloves, and liquid proof dipped supported PVC industrial gloves. As described below, the provisions of the Final Judgment are designed to prevent the anticompetitive effects of the proposed acquisition in each of these markets.

To eliminate the competitive threat posed by the proposed acquisition in the unsupported nitrile glove market, the

proposed Final Judgment requires PDH to divest, subject to certain exclusions, any and all interest that it has or shall acquire in real, personal, and intellectual property used in the production or sale of industrial gloves at Edmont's manufacturing facility in Canton, Ohio (the "Canton facility"). Edmont currently manufactures unsupported nitrile gloves at this facility. It is the government's judgment that an acceptable purchaser of the Canton facility will compete effectively in the United States market for unsupported nitrile gloves, and will supplant the loss of PDH in this market.

Excluded from this divestiture are patents, trademarks, trade names, copyrights, trade dress, nitrile formulations, research and development, and currently-used formers. However, the proposed Final Judgment requires PDH to provide the purchaser of the Canton facility with a non-exclusive and perpetual license to practice any and all patents pertinent to production at the facility, a nitrile formulation that will enable the purchaser to produce gloves of a quality, manufacturing efficiency, and yield substantially equivalent to that currently achieved by Edmont at the facility, and replacement formers of comparable quality to those currently used at the facility.

To preserve the current level of competition in the liquid proof dipped supported glove markets, the Final Judgment requires PDH to divest any and all interest that it has or



shall acquire in its subsidiary Ansell Granet Inc. This divestiture would include all real, personal, and intellectual property used in Ansell Granet's industrial glove production and sales. Ansell Granet currently manufactures liquid proof dipped supported gloves and is PDH's sole source of such gloves for the United States markets. An acceptable purchaser of this plant thus will fully replace PDH as a competitor in these markets.

Under the Final Judgment, PDH is to complete both divestitures within six months of the filing of the judgment, and if it fails to do so, the court will appoint a trustee to accomplish the divestitures. In the latter eventuality, only the trustee would have the right to sell the assets to be divested, and PDH would be required to pay for all of the trustee's sale related expenses. If the trustee does not accomplish the divestitures within six months of appointment, the trustee and the parties will make recommendations to the Court and the Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may include extending the trust or the term of the trustee's appointment.

The Final Judgment provides that both the Canton facility and Ansell Granet must be divested in such a way as to satisfy the United States that those assets can and will be operated by the purchaser(s) as viable, ongoing businesses that can compete

effectively in the sale of industrial gloves in the United States. In this regard, it affords the United States an opportunity to review any proposed sale to effect the divestitures prior to consummation. If the United States requests information from Pacific Dunlop to assess a proposed sale, the sale may not be consummated until at least 15 days after Pacific Dunlop supplies the information. Upon objection by the United States, a proposed divestiture may not be completed. Until the required divestiture has been accomplished, Pacific Dunlop must preserve and maintain the Canton facility and Ansell Granet as ongoing and economically viable businesses.

#### 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 attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

PROCEDURE AVAILABLE FOR MODIFICATION  
OF THE PROPOSED FINAL JUDGMENT

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

The APPA 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 wishes 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 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:

John J. Hughes, Chief  
Middle Atlantic Office  
Antitrust Division  
The Curtis Center  
Suite 650  
7th & Walnut Streets  
Philadelphia, Pennsylvania 19106

## VI

### ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

An alternative to settling this action pursuant to the proposed Final Judgment would be for the United States to seek preliminary and permanent injunctions against the consummation of the acquisition of Edmont by PDH. The United States rejected this alternative because the divestitures in the proposed Final Judgment should prevent the acquisition from having significant anticompetitive effects in any of the industrial glove markets alleged in the complaint.

With respect to the liquid proof dipped supported glove markets, Ansell Granet is the only operation affiliated with Pacific Dunlop that manufactures dipped supported industrial gloves, and its divestiture provides all the relief that could be obtained by the United States with respect to those markets. Regarding the unsupported nitrile glove market, the United States considered as an alternative requiring PDH's affiliate, Ansell Glove Company Ltd., to divest its assets devoted to this market, which are located in the United Kingdom; PDH is not otherwise engaged in the production of unsupported nitrile gloves. However, the United States concluded that the sale of Edmont's Canton facility would better enable the purchaser to compete for sales in the United States than a sale of the Ansell Glove Company operations. While the two facilities have roughly equal production capacities, Ansell Glove Company's manufacturing

plant is located in England, and therefore its ability to compete in the United States is to some extent subject to fluctuating foreign exchange rates and other potential relative disadvantages of supplying the United States from overseas facilities.

The United States is satisfied that the proposed Final Judgment fully resolves the anticompetitive effects of the proposed acquisition alleged in the complaint. Although the judgment may not be entered until the criteria established by the APPA (15 U.S.C. §15(b)-(h)) have been fully satisfied, the public will benefit immediately from the judgment's provisions because the defendants have stipulated to comply with its terms pending its entry by the court.

VII

DETERMINATIVE MATERIALS AND DOCUMENTS

There are no materials or documents that the United States considered to be determinative in formulating this proposed Final Judgment. Accordingly, none are being filed with this Competitive Impact Statement.

Respectfully submitted

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