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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 82-233
)	
ALL COAST FISHERMAN'S)	COMPETITIVE IMPACT
MARKETING ASSOCIATION, INC.,)	STATEMENT
)	
Defendant.)	Filed: July 13, 1982
)	

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act [15 U.S.C. §16(b)], the United States hereby submits this Competitive Impact Statement relating to the proposed consent judgment submitted for entry in this civil antitrust proceeding.

I.

NATURE OF THE PROCEEDING

On February 19, 1982, the United States filed a civil Complaint under Section 4 of the Sherman Act (15 U.S.C. §4), alleging that defendant, All Coast Fisherman's Marketing Association, Inc., (defendant Association), and unnamed co-conspirators, had engaged in a combination and conspiracy to

1 restrain competition in the sale of seafood. The Complaint asks
2 the Court to find that the defendant has violated Section 1 of the
3 Sherman Act (15 U.S.C. §1) and further requests the Court to
4 enjoin the continuance of the conspiracy.

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6 II.

7 PRACTICES GIVING RISE TO

8 THE ALLEGED VIOLATION

9 Defendant is an Association incorporated in the State of
10 Oregon whose members are commercial fishermen, the majority of
11 whom operate out of the Port of Charleston, Oregon. The defendant
12 is a cooperative, formed pursuant to the Fishermen's Collective
13 Marketing Act of 1934 ("FCMA"), 15 U.S.C. §§ 521-522, which
14 permits fishermen belonging to the defendant to act together to
15 catch, produce, prepare for market, process, handle and market
16 seafood. Under the FCMA, these joint activities are exempt from
17 the antitrust laws as long as only members participate in such
18 activities. The exemption does not apply where nonmembers engage
19 in joint marketing and pricing actions with members. In addition,
20 immunity does not and has never extended to joint acts to coerce
21 nonmembers to comply with the defendant's prices or its policies.

22 The Government contends, and was prepared to show at trial,
23 that, beginning at least as early as 1971 and continuing to the
24 date of the filing of this Complaint (February 19, 1982),
25 nonmembers attended meetings of the defendant at which the price
26 per pound of seafood to be offered processors (the ex-vessel
27 price) was discussed. The nonmembers were allowed to participate

28 COMPETITIVE IMPACT STATEMENT - Page 2

1 in these meetings and were permitted to vote along with the
2 members on what ex-vessel price should be offered processors. In
3 addition, the Government was prepared to show that, during periods
4 when the members were refusing to fish because the defendant was
5 not able to obtain an agreement with processors on ex-vessel
6 prices (sometimes referred to as "tie ups"), employees of
7 defendant secured agreements from nonmembers not to fish until the
8 defendant had reached an agreement on ex-vessel prices with the
9 processors. The Government was also prepared to show that the
10 defendant compelled nonmembers through threats or harassment to
11 refrain from fishing until a price was determined, and to sell
12 seafood at prices being demanded by the defendant; and that the
13 Association required processors to collect fees on all seafood
14 delivered, including seafood from nonmembers, through a provision
15 set out in defendant's dealer agreements.

16 According to the Complaint, the practices described above have
17 had the following effects: (a) the ex-vessel prices offered
18 processors by and paid to commercial fishermen have been fixed and
19 maintained at artificial and uncompetitive levels; (b) price
20 competition in the sale of seafood by commercial fishermen to
21 processors has been restrained; (c) commercial fishermen have
22 been prevented from free and open competition in the sale of
23 seafood to processors; and (d) processors of seafood have been
24 deprived of the benefits of free and open competition in the
25 market for seafood.

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III.

EXPLANATION OF THE PROPOSED

CONSENT JUDGMENT

The United States and defendant All Coast Fisherman's Marketing Association, Inc., have agreed that the proposed Final Judgment, which is in a form negotiated by the parties, may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The proposed Final Judgment provides that there has been no admission by anyone with respect to any issue of fact or law. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, entry of this Final Judgment by the Court is conditioned upon a determination that the proposed judgment is in the public interest.

The proposed Final Judgment will prohibit the All Coast Fisherman's Marketing Association, Inc. from engaging in any joint pricing and marketing activities with nonmembers and from compelling nonmembers to comply with defendant's prices or policies (Sections IV(A)-(B)). In addition, it prohibits the Association from requiring processors to collect and pay fees on seafood delivered by nonmembers, and from limiting the amount of seafood purchased by nonmembers (Sections IV (C)-(D)).

A proviso in the decree permits the Association to make public announcements by posting, radio, television or otherwise of the status of negotiations with processors or of the position of defendant (Section IV (D)). The purpose of this proviso is to permit the Association to provide its members, often at sea, with information about its activities.

1 In order to effectuate the provisions of Section IV of the
2 proposed Final Judgment, defendant is required to provide a copy
3 of the Final Judgment, along with a letter prepared by the
4 plaintiff explaining the Final Judgment, to each commercial
5 fisherman who is currently a member of the Association or who
6 belonged to the Association at any time during the period
7 January 1, 1977-December 31, 1980. In addition, defendant is
8 required to provide a copy of the Final Judgment and the above
9 letter to any future members as they become members (Section
10 V(A)). Defendant Association is also required to send a copy of
11 this Final Judgment along with the letter explaining the Final
12 Judgment prepared by the plaintiff to each processor who is a
13 signatory to an All Coast Fisherman's Marketing Association dealer
14 agreement and shall provide a copy of the Final Judgment along
15 with the above letter to any processor who in the future signs All
16 Coast Fisherman's Marketing Association dealer agreements (Section
17 V(B)). Defendant Association is further required to have the
18 Final Judgment explained to its members by an attorney at an
19 Association meeting held in 1982 (Section V(C)).

20 The proposed Judgment is designed to prevent any recurrence of
21 the activities alleged in the Complaint. The provisions in the
22 proposed judgment are intended to ensure that only members of the
23 defendant participate in any marketing decisions made by the
24 defendant and that nonmembers be allowed to make marketing
25 decisions without interference by the defendant. The provisions
26 of the Final Judgment will be in effect for a period of ten years.

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IV.

ALTERNATIVES TO THE PROPOSED
FINAL JUDGMENT

The alternative to the proposed Final Judgment would be a full trial of the case. In the view of the Department of Justice, such a trial would involve substantial costs to the United States and is not warranted since the proposed Final Judgment provides the relief that the United States sought in its Complaint.

V.

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 fees. Under the provisions of Section 5(a) (15 U.S.C. §16(a)), this Final Judgment has no prima facie effect in the lawsuits which may be brought against the defendant.

VI.

PROCEDURES AVAILABLE FOR
MODIFICATION OF THE PROPOSED JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed judgment should be modified may submit written comments to Anthony E. Desmond, Department of Justice, Antitrust Division, 450 Golden Gate Avenue, San Francisco, California 94102, within the 60-day period provided by

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1 the Act. The comments and the Government's responses to them will
2 be filed with the Court and published in the Federal Register.
3 All comments will be given due consideration by the Department of
4 Justice, which remains free to withdraw its consent to the
5 proposed judgment at any time prior to its entry if it should
6 determine that some modification of the judgment is necessary to
7 the public interest. The proposed judgment itself provides that
8 the Court will retain jurisdiction over this action, and that the
9 parties may apply to the Court for such orders as may be necessary
10 or appropriate for the modification or enforcement of the judgment.

11
12 VII.

13 DETERMINATIVE DOCUMENTS

14 No materials and documents of the type described in Section
15 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C.
16 §16(b)) were considered in formulating this proposed judgment.
17 Consequently, none are filed herewith.

18 Dated:

19 /s/ Richard B. Cohen
RICHARD B. COHEN

20
21 /s/ Shauna I. Marshall
SHAUNA I. MARSHALL

22
23
24 /s/ Jonathan R. Howden
JONATHAN R. HOWDEN

25 Attorneys, U.S. Department of
26 Justice