

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

- - - - -X  
UNITED STATES OF AMERICA, :  
 :  
 Plaintiff, :  
 :  
 v. : Civ. No. N 82-305 (PCD)  
 : Filed: April 4, 1985  
NEWELL COMPANIES, INC., :  
 :  
 Defendant. :  
- - - - -X

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 14, 1982, the United States filed a civil antitrust Complaint alleging that the April 1981 acquisition of the Stanley Drapery Hardware Division ("SDH") of The Stanley Works by Newell Companies, Inc. ("Newell") violated Section 7 of the Clayton Act, 15 U.S.C. §18. The Complaint alleges that the effect of the acquisition may be

substantially to lessen competition in the manufacture and sale of drapery hardware in the United States. The Complaint seeks the divestiture of the acquired business.

The United States and the defendant have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. 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

On or about April 24, 1981, Newell acquired SDH for approximately \$11,535,000. Since the acquisition, Newell has operated SDH under the trade name Judd Drapery Hardware ("Judd").

Both Newell and Judd manufacture and sell drapery hardware. Drapery hardware is the term used by the industry to describe the unique cluster of products that are used to hang draperies or curtains. Drapery hardware products include traverse rods (both white and decorative), cafe rods, curtain rods, and sash rods, each of which is manufactured in a variety of sizes and styles, and various functional and decorative accessories such as hooks, rings, supports, brackets and tiebacks. Drapery hardware

manufacturers sell their products to retailers, jobbers and drapery workrooms in the United States. Both the manufacturers and the purchasers of drapery hardware treat this cluster of interrelated items as a distinct product line.

Since no other products can reasonably and practically be used to hang draperies or curtains, which is the only function of drapery hardware, there are no substitutes in the marketplace for these products. Thus, if the price of drapery hardware increases, buyers who need drapery hardware cannot turn to any other product. For these and other reasons, the United States contends that the manufacture and sale of drapery hardware in the United States is the appropriate market within which to assess the competitive effect of the acquisition.

Newell is the second largest manufacturer of drapery hardware in the United States. In 1980, Newell had domestic drapery hardware sales of approximately \$32 million and a 14.15% market share. SDH was the sixth largest drapery hardware manufacturer in the United States. In 1980, SDH had domestic drapery hardware sales of approximately \$17 million, and a 7.46% market share. The combination of Newell and SDH increased Newell's market share to 21.61%.

The market for the manufacture and sale of drapery hardware in the United States is highly concentrated. The

four largest firms accounted for 78.48%, and the six largest firms had 95.03% of 1980 domestic sales. The merger raised the Herfindahl-Hirschman Index (HHI) from 2238 to 2448 in 1980. The HHI, a measure of market concentration, is the sum of the squares of the market shares of each competitor. Thus, the effect of this acquisition may be substantially to lessen competition in the manufacture and sale of drapery hardware in the United States.

The United States and the defendant have engaged in extensive pretrial discovery. Upon the proposal of the defendant, settlement negotiations have been conducted. These negotiations have resulted in the proposed Final Judgment which is the subject of this Statement.

### 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 APPA. The proposed Final Judgment constitutes no admission by any party as to any issue of fact or law. Under the provisions of Section 2(e) of the APPA, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed Final Judgment is in the public interest.

A. Divestiture

The proposed Final Judgment requires Newell to divest all of its ownership in and control over Judd, within 180 days of the entry of the Final Judgment, to a purchaser who intends to operate it as a viable and ongoing business engaged in the manufacture and sale of drapery hardware. At the request of a prospective purchaser, Newell must sell less than all of Judd's assets but only with the written approval of the United States and only if such assets are capable of being operated as a viable and ongoing business engaged in the manufacture and sale of drapery hardware. Newell is not required to finance the sale of Judd or any of Judd's assets.

Divestiture shall be accomplished through an independent broker, previously selected by the parties in accordance with the agreement attached to the proposed Final Judgment, with full power and authority to carry out the divestiture. This procedure will ensure that divestiture will be effected in an expeditious manner. The independent broker will commence efforts to effect divestiture immediately upon the filing of the proposed Final Judgment with the Court. Newell must use its best efforts to assist the independent broker in promoting the sale of Judd. The independent broker will attempt to sell Judd at the highest price attainable.

After receiving notice by the independent broker of the terms and conditions of a proposed sale, either party may object to the proposed sale. Either party's objection shall be sufficient to bar the sale unless the Court approves the sale.

If the independent broker has not effected divestiture within 180 days following entry of the proposed Final Judgment, Newell's obligation to divest Judd shall be terminated. However, if there is a potential purchaser seriously interested in buying Judd, the Court may extend Newell's obligation of divestiture for such additional period of time as may be reasonably necessary to complete negotiations and effect the sale.

Until the divestiture of Judd is accomplished, the Stipulation and Hold Separate Order entered by the Court, which requires Newell to maintain and operate Judd as a separate and ongoing business enterprise, shall remain in effect and Newell shall comply therewith.

In addition, at the option of the purchaser, Newell is required to transport, at its expense, to a location selected by the purchaser, some or all of the assets which Newell previously transferred from Judd's operation in Wallingford, Connecticut. The assets are specified in Schedule A to the proposed Final Judgment. The method of

transportation shall be at the purchaser's discretion, reasonably exercised, although Newell shall not incur an expense greater than the expense to transport the assets back to Wallingford.

Finally, at the option of the purchaser, for a period not to exceed three months, Newell is required to provide assistance to aid the purchaser in re-establishing a staff of field service representatives that is capable of servicing Judd's customers.

B. Other Provisions

The proposed Final Judgment enjoins Newell for ten years from acquiring any of the assets or stock of any person engaged in the manufacture or sale of drapery hardware in the United States without first obtaining the approval of the United States. If the United States objects, Newell can seek the Court's approval, but must bear the burden of proof that the acquisition will not lessen competition or tend to create a monopoly. Newell may acquire drapery hardware manufacturing equipment in the ordinary course of its business.

The proposed Final Judgment also contains reporting provisions and visitation rights that will permit the United States to determine and secure compliance with the Final Judgment.

IV

REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Entry of the proposed Final Judgment will have no effect on the rights of persons who may have been injured by the alleged violation. Private plaintiffs may sue for any remedy they deem appropriate. However, pursuant to Section 5(a) of the Clayton Act, 15 U.S.C. §16(a), this Final Judgment may not be used as prima facie evidence in private litigation.

V

PROCEDURES AVAILABLE FOR MODIFICATION  
OF THE PROPOSED FINAL JUDGMENT

The United States and the defendant 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 sixty (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 wants to comment must do so within sixty (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 the 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:

Ralph T. Giordano, Chief  
New York Field Office  
Antitrust Division  
United States Department of Justice  
26 Federal Plaza, Room 3630  
New York, New York 10278

## VI

### ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The relief sought in the Complaint is the divestiture of Judd. The proposed Final Judgment requires that Newell, through an independent broker, divest Judd within six months after entry of the Final Judgment.

The United States considered the alternative to the proposed Final Judgment of proceeding to trial on the merits. While the United States was confident of its ability to succeed ultimately after a trial, it is likely that after a successful trial a court would order divestiture substantially the same as that to which the parties have now agreed. Thus, the proposed Final Judgment fully achieves the objective sought by the United States and is preferable to proceeding to a trial on the merits.

VII

DETERMINATIVE DOCUMENTS

There are no materials or documents which the United States considered determinative in formulating this proposed Final Judgment. Accordingly, no documents are being filed along with this Competitive Impact Statement.

Dated: New York, New York  
April 1, 1985

Respectfully submitted,

/s/ Lowell L. Jacobs  
LOWELL L. JACOBS

/s/ Martha E. Gifford  
MARTHA E. GIFFORD

/s/ Geoffrey Swaebe  
GEOFFREY SWAEBE

/s/ Belinda Johnson  
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Attorneys, Department of  
Justice  
Antitrust Division  
26 Federal Plaza, Room 3630  
New York, New York 10278  
(212) 264-0659

CERTIFICATE OF SERVICE

I, Lowell L. Jacobs, hereby certify that on this day of April 3, 1985, I served a copy of the foregoing Competitive Impact Statement upon William S. D'Amico, Esq., D'Amico, Luedtke, Demarest & Golden, 1920 N Street, N.W., Washington, D.C. 20036, counsel for defendant Newell Companies, Inc., by Express Mail.

/s/ Lowell L. Jacobs  
LOWELL L. JACOBS

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