

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Civil Action No.
v.	)	
	)	Filed: March 1, 1984
SOUTH WATER MARKET CREDIT	)	
ASSOCIATION,	)	
	)	
Defendant.	)	

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), the United States files this Competitive Impact Statement, relating to the proposed Final Judgment submitted for entry in this case.

I.

Nature and Purpose of the Proceeding

On March 1, 1984, the United States filed a civil antitrust suit alleging that the South Water Market Credit Association (the "Association") and its predecessor, the Chicago Produce Trade and Credit Association, participated in a conspiracy to fix credit terms in the sale of produce from 1902 until the date of filing of the complaint. The Association is an Illinois corporation doing business in Chicago, Illinois. It is an organization with approximately 25 members, most of which are independent wholesale produce firms doing business in the terminal market on South Water Market Street in Chicago.

The complaint alleges that the Association and co-conspirators agreed to fix credit terms employed in the sale of produce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1). The complaint asks the Court to: (1) find that the defendant violated the Sherman Act; (2) enjoin the defendant from continuing or renewing the conspiracy; and (3) require that notices be sent to Association members informing them of entry of the judgment.

On the same day the complaint was filed, the parties filed a proposed Final Judgment, Stipulation, and this Competitive Impact Statement. Under the Stipulation, the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act. Entry of the proposed Final Judgment will terminate the action. The Court will retain jurisdiction to interpret, modify or enforce compliance with the provisions of the proposed Final Judgment.

## II.

### Practices and Events Giving Rise to the Alleged Violation

Association members are independent produce distributors. The Association disseminates credit information and lists of delinquent customers to its members weekly. The Association's predecessor, the Chicago Produce Trade and Credit Association, was formed in 1902. The predecessor organization's statement of purpose included several objects, including the regulation

of credits and collection of debts. That goal is still considered to be one of the primary purposes of the Association.

The Association's current rules were adopted in 1941 and include several provisions dealing with members' credit practices. The rules state that (1) with specified exceptions, customers of members must pay their bills by Thursday of the week following the sale; (2) members are to report to the Association customers who do not pay on time; (3) the Association will circulate a list of delinquent accounts to all members; (4) no member can extend credit to a delinquent account; and (5) new customers are to file a financial statement with the Association, which will investigate the customer before members extend it credit. The form financial statement states that bills are due on a specified day of the week following the sale and that delinquent accounts will not be given credit by members. Essentially the same rules are printed on the form cover sheet for the weekly list of delinquent accounts. Thus each week the members are reminded of the Association's credit restrictions.

In December 1982 the Antitrust Division opened an investigation to determine whether the Association was violating or had violated the Sherman Act. The basis for the investigation was a newsclipping which described the

Association and stated that its bylaws fixed the term of credit offered by its members and that it circulated a "blacklist" identifying those who did not pay on time. The investigation revealed, as the complaint alleges that the defendant and co-conspirators had agreed to fix and maintain credit terms employed in the sale of produce.

### 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. The proposed Final Judgment does not constitute an admission by any party as to any issue of law or fact. 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 Judgment is in the public interest.

The proposed Final Judgment contains two principal forms of relief. First, the defendant is enjoined from repeating the behavior that constituted the conspiracy. Second, the proposed Judgment places an affirmative obligation on the defendant to provide notice of this action to persons affected by the Association's credit rules.

A. Prohibited Conduct

Section IV of the proposed Judgment enjoins certain agreements with members. Section IV(a) enjoins all agreements on the time for which members extend credit. This was the heart of the alleged violation. Section IV(b) bans agreements to withhold credit from any person. This prohibits the alleged ancillary agreements to withhold credit from delinquent and unapproved accounts. Finally, Section IV(c) enjoins agreements regarding the amount or any other term of credit that members grant. This covers agreements on dollar limits, interest charges, or any other term of credit.

Section V enjoins use of forms and form letters that contain any reference to bills being due within a specified number of days, or on any day of the week. As indicated above, the Association has employed several forms of this nature. This prohibition is meant to bring the impropriety of Association use of such forms to the attention of Association officials and to ensure that such forms will not be used in the future.

Section VI confirms that the proposed Judgment does not interfere with the legitimate functions of the Association. It states that the Association can circulate credit information and that it can conduct its business in any other reasonable, lawful, commercial fashion.

B. Affirmative Obligations of the Defendant

Section VII requires that notice of the Judgment be sent to members. The notice, attached as an exhibit to the proposed Judgment, spells out the rights and obligations of members and the Association so that all know what is allowable behavior.

The notice refers to the Perishable Agricultural Commodities Act of 1930, 7 U.S.C. §§ 499(a)-(s). That Act requires, inter alia, that dealers must pay promptly for fresh fruits and vegetables. 7 U.S.C. § 499(b)(4). United States Department of Agriculture rules provide that prompt payment within the meaning of the Act is payment within any agreed-upon time period or, in the absence of agreement, payment within ten days. 7 C.F.R. § 46.2(aa). The proposed Judgment does not interfere with this scheme.

Section VII B requires that the Association, within 30 days of entry of the Judgment and annually for three years, notify its officers, managers, and certain employees of the obligations imposed on each of them by the proposed Judgment. Section VII C requires the Association to provide a copy of the proposed Judgment to anyone who requests one and pays a reasonable copying fee. Section VII D requires the Association for three years to report to the United States actions taken to ensure compliance with the proposed Judgment and to provide a

copy of any new rule or bylaw. Thus, the United States will receive reports which will allow it to police compliance with the notice provisions.

Finally, under Section VIII of the Proposed Final Judgment, the Justice Department will have access, upon reasonable notice, to the defendant's records and personnel to determine its compliance with the Final Judgment and may require the defendant to submit written reports with respect to any of the matters contained in the Final Judgment.

#### IV.

##### Competitive Effect of the Proposed Final Judgment

The relief encompassed in the Final Judgment is aimed at preventing any recurrence of the activities described in the complaint, and at educating Association members concerning their right to negotiate terms of sale. Agreements on credit terms interfere with the normal operation of competitive forces in the marketplace and, accordingly, result in artificially determined price levels.

Entry of the Final Judgment will ensure that each member of defendant independently determines its terms and conditions of credit in the sale of produce. This assurance is primarily provided by Sections IV and V, which forbid all agreements relating to credit and prohibit the Association from using forms which suggest the existence of common credit terms among members. In addition, the notice requirements of Section VII

will ensure that members will receive notices informing them that any Association member is free to offer whatever credit terms it chooses. This should stimulate competition in credit terms and allow the level of credit in the market to reach its competitive equilibrium.

V.

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 such person has suffered, as well as costs and reasonable attorneys fees. Entry of the proposed Final Judgment in this proceeding will neither impair nor assist the bringing of any such private antitrust action. Under Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed judgment has no prima facie effect in any private lawsuit that may be brought against the defendant.

VI.

Procedures Available for Modification  
of the Proposed Final Judgment

The proposed Final Judgment is subject to a stipulation between the United States and the defendant providing that the United States may withdraw its consent to the proposed Judgment



at any time before it is entered by the Court. The Antitrust Procedures and Penalties Act conditions entry upon the Court's determination that the proposed Judgment is in the public interest. Under Section IX of the proposed Final Judgment, the Court would retain jurisdiction over this action in order, among other things, to permit either party to apply for any necessary or appropriate modification of the proposed Judgment or construction of its provisions.

The Antitrust Procedures and Penalties Act provides a period of at least sixty days preceding the entry of the proposed Final Judgment within which any person may submit to the United States comments regarding the proposed Final Judgment. The United States will evaluate the comments and determine whether it should withdraw its consent. The comments and the response of the United States to the comments will be filed with the Court and published in the Federal Register in accordance with the Antitrust Procedures and Penalties Act.

Written comments should be submitted to:

Alan L. Marx, Chief  
General Litigation Section  
Antitrust Division  
U.S. Department of Justice  
Washington, D.C. 20530

## VII.

### Alternatives to the Proposed Final Judgment

This proceeding does not involve any unusual or novel issues of fact or law which might make litigation a more desirable alternative than entry of the Final Judgment. All

relief requested in the complaint is included in the proposed Final Judgment.

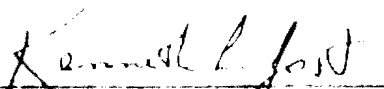
VIII.

Determinative Documents

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

Dated:

Respectfully submitted,

  
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