

it has since 1977 grown to a level in 1979 higher than that of any of the preceding years examined.

(6) Notwithstanding the petitioner's claim of injury from alleged LTFV imports, Linden Chemicals and Plastics purchased during the period under investigation three new production facilities for sodium hydroxide, one of which is located in the Northeast area that Linden asserts is subject to the greatest impact from the alleged LTFV imports.

(7) No information is found in the record regarding the domestic industry's return on investment, cash flow, and ability to raise capital. The absence of information on these factors was not decisive in this case.

Alleged LTFV Imports Not the Cause of Any Material Injury

(8) Imports from West Germany, France, Italy and the United Kingdom grew from 77,537 short tons in 1978 to 161,188 in 1978. However, in the first ten months of 1979 they declined to 79,587 short tons from the 132,921 short tons imported during the comparable period in 1978.

(9) Notwithstanding the relatively high LTFV margins for all four countries indicated by Treasury's initial investigatory activities, the best information available on pricing indicates that in the Northeast area of the United States, where imports are concentrated, large U.S. producers supplying the region from their domestic facilities are by far the lowest priced suppliers to distributors of 50 percent solution sodium hydroxide. Because both importers and the smaller U.S. producers have been significantly undersold by their larger domestic competitors in the Northeast area, any price suppression or depression that may have occurred has not been due to alleged LTFV imports.

(10) The ratio of imports from the four countries to U.S. consumption remained at low levels, increasing from 0.85 percent in 1976 to 1.74 percent in 1978. The ratio dropped from 1.78 percent in January-October 1978 to 0.87 percent in January-October 1979.

No Regional Industry

(11) The petitioner asserted that these investigations should be decided on a regional industry basis. The Trade Agreements Act of 1979 amended the Tariff Act of 1930 to include specific conditions for the treatment of producers in a geographical area as a separate regional industry within the

meaning of the law.⁵ The domestic producers must sell all or almost all of their production in the area and the demand for the product in that area cannot be supplied to any significant degree from the United States producers not located there. Both conditions must be met.

(12) The Northeast area, where all the petitioner's production facilities were located until recently, and where all the petitioner's sales as well as the sales of the alleged LTFV imports are concentrated, does not qualify as a regional market within the meaning of the antidumping statute because it is served to a large extent by U.S. producers whose production facilities are located outside the region, primarily in the Gulf Coast States. In 1976, total reported domestic sales in the Northeast area exceeded local productive capacity by 299,000 short tons, in 1977 by 46,000 short tons, and in 1978 by 96,000 short tons. In 1979, due to rapid local expansion, capacity may for the first time exceed domestic sales in the area.

No Threat of Material Injury

(13) The recent decline in subject imports' market penetration and the expansion undertaken by the petitioner, as well as the other factors cited above, do not give any reasonable indication that the alleged LTFV imports threaten the domestic industry with material injury.

By order of the Commission.

Issued: February 14, 1980.

Kenneth R. Mason,
Secretary.

[FR Doc. 80-5410 Filed 2-20-80; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-4 (Final) and 701-TA-5 (Final)]

Taps, Cocks, Valves and Similar Devices, and Parts Thereof From Italy and Japan; Termination of Investigations and Cancellation of Hearing

AGENCY: U.S. International Trade Commission.

ACTION: Termination of the two captioned investigations under section 704 of the Tariff Act of 1930.

⁵ Subparagraph (C) of 19 U.S.C. 1677 states: "In appropriate circumstances, the United States, for a particular product market, may be divided into 2 or more markets and the producers within each market may be treated as if they were a separate industry if—(i) the producers within such market sell all or almost all of their production of the like product in question in that market, and (ii) the demand in that market is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States."

EFFECTIVE DATE: February 12, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. John MacHatton, Office of Investigations, telephone number (202) 523-0439.

SUPPLEMENTARY INFORMATION: By notice issued January 10, 1980, and published in the *Federal Register* (45 FR 3400 (January 17, 1980)), the Commission instituted the subject investigations to determine whether with respect to the articles involved an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of the subsidized imported merchandise. A public hearing was scheduled, on a tentative basis, to be held at the International Trade Commission Building, on April 2, 1980.

On February 4, 1980, the Commission received a letter from counsel for the original petitioner for the countervailing duty investigations. The text of that letter is reproduced below.

Mrs. Catherine Bedell,
Chairman, U.S. International Trade Commission,
Room 208, 701 E Street, N.W.,
Washington, D.C.

January 31, 1980.

Dear Madam Chairman: I am writing to inform you on behalf of the Valve Manufacturers Association that the Valve Manufacturers, petitioners in a countervailing duty case against Japan and Italy, wish to withdraw their petition. I request, as a result, that the International Trade Commission accept this withdrawal and notify all companies who have received questionnaires of the withdrawal. Thank you.

Sincerely,

David A. Hartquist,

Counsel, Valve Manufacturers Association.

The legal authority for a request to withdraw a petition for a countervailing duty investigation and the legal authority for the Commission to terminate an investigation in response to a request to withdraw the petition are found in section 704 of the Tariff Act of 1930. The only restriction on the Commission's authority to terminate is that all parties to the investigation must be notified of the termination. In the instant case only the petitioners have appeared as parties before the Commission. For these reasons the Commission is granting the request and terminating these investigations. In addition to notifying interested persons who have not appeared before the agency, the Commission is notifying the Department of Commerce of its action in these cases.

By order of the Commission.

Issued: February 13, 1980.

Kenneth R. Mason,
Secretary.

[FR Doc. 80-5415 Filed 2-20-80; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Antitrust Division

Comment and Response To Proposed Final Judgment in United States v. Chelsea Industries, Inc., et al.

The Antitrust Division has reviewed a comment concerning its proposed Final Judgment in *United States v. Chelsea Industries, Inc., et al.*, Civil Action No. 78-3224-C. The proposed Final Judgment and a Competitive Impact Statement were filed with the United States District Court for the District of Massachusetts on November 30, 1979.

The comment and the Antitrust Division's response are attached hereto for publication pursuant to the Antitrust Procedures and Penalties Act of 1974, 15 U.S.C. 16(d). These materials have also been filed with the United States District Court for the District of Massachusetts.

Joseph H. Widmar,
Director of Operations.

Myers and Brown
Concord, N.H., January 24, 1980.

Re United States of America v. Chelsea Industries Inc. and Avon Tape Inc. Civil Action No. 78-3224-C

Mr. Anthony V. Nanni,
Department of Justice, Antitrust Division,
Washington, D.C. 20530.

Dear Mr. Nanni: Please be advised that I represent Action Manufacturing, Inc., of Gonic, New Hampshire, a small manufacturer of pressure sensitive tape for the shoe industry.

Pursuant to 15 USC § 16(d), this letter is to serve as a commentary on the Proposed Final Judgment entered into by the plaintiff, United States of America; and the defendants, Chelsea Industries, Inc., and Avon Tape, Inc. in connection with Civil Action No. 78-3224-C.

The Proposed Final Order and the Competitive Impact Statement both serve to prohibit certain conduct, while at the same time requiring affirmative conduct from the defendants in lieu of a full trial on the above action. While the desired result of the Final Order and Competitive Statement is to restore competition to the shoe tape industry, neither reach far enough vis-a-vis their limits on the defendants to effect this desired result.

Specifically, the Proposed Final Judgment (III, Page 2) fails to take into account the import of limiting the defendants' ability to fix, maintain, and stabilize the price of pressure sensitive tape sold in foreign markets. Virtually all of the tapes sold abroad by the defendants is manufactured in the United States. To the extent that defendants are not prohibited from setting prices on these products, they remain free to subsidize their domestic sales with exorbitant prices abroad. Moreover, given the overwhelming market shares of the defendants in the United States, any small company such as Action would naturally try to become a viable domestic competitor by

building up its financial strength through foreign sales. Once that financial strength was sufficient, Action or others in its situation would be in a much better position to compete in the domestic market. The omission of limitations or international activities should be of particular concern in light of the dominant competitive influence that international shoe sales have on the U.S. domestic market. American shoe manufacturers and retailers import 53 percent of the shoes sold in the U.S. market. Because 60 percent of our client's sales volume is currently outside of the domestic market, the effect of not including international sales in the Final Order is to allow the defendants to operate directly at the expense of our client's international sales and indirectly at the expense of the domestic consumer who is no doubt paying the price of any price fixing activities concerning the international market.

Section 1 of the Sherman Antitrust Act was designed and has been interpreted to prohibit those activities which have the purpose or effect of stabilizing price or competition. *US v. Gypsum* 438 US 422, 98 Sct 2864 (1978). The notion that external business activities in violation of U.S. antitrust laws may affect internal trade and commerce so as to confer jurisdiction upon U.S. courts to enjoin such activity was recognized as early as 1927 in *U.S. v. Sisal Sales Corp.* 274 U.S. 268, 71 L.Ed. 1042, 47 Sct. 592.

Clearly the Final Judgment as proposed would not ameliorate the restraint on competition in the shoe tape industry if the defendants were allowed to continue to engage in activities which would affect over one half of the entire U.S. market. Such a result certainly would not be in the public interest as required under 15 USC § 16. Therefore, it is recommended that the Proposed Final Judgment be modified at (III, Page 2) to include international sales. Accordingly, it is recommended that (VII c 2, Page 4) of the same be modified to "Adopt and publish domestic and international prices, discounts,"; that (III, Page 5) of the Competitive Impact Statement be modified to include "In addition . . . lawful considerations to adopt publish domestic and international prices, discounts, etc. . . ."

It is also our belief that the Proposed Final Judgment and Competitive Impact Statement could be modified to more effectively restore competition to the shoe tape industry by requiring additional affirmative conduct on the part of the defendants.

Specifically, the requirement at (VII a, Page 4) of the Proposed Final Judgment should be expanded to provide that: Defendant shall provide a copy of this final judgment to each of its existing customers and to any new customers within 30 days after the judgment is entered and annually on the anniversary of this judgment for the next five (5) consecutive years. Notice shall be by registered mail to the Chief Executive Officer of each customer. Mail receipts shall be retained by each defendant in its corporate files. Similarly, the Competitive Impact Statement at (III, Page 5) should be modified to require each defendant to provide a copy of the Final Judgment and a copy of the Competitive Impact Statement to each of its existing customers and subsequent

new customers . . . "at least once each year for five (5) years after the entering of the Final Judgment." It is also proposed that the Competitive Impact Statement be modified under the Section entitled "Remedies Available to Private Litigants" (IV, Page 7, paragraph 1; Sentence 3) to provide that these potential private plaintiffs may encourage the Attorney Generals of their respective states to sue, etc. . . . in their names. Finally, the Competitive Impact Statement should be modified in the section on "Procedure Available for Modification of Proposed Final Judgment" to require that notice of the opportunity to comment on the proposed Final Judgment be advertised in shoe trade journals in the U.S. and abroad.

The implementation of the proposed modifications will aid in deterring the defendant from engaging in any further anticompetitive activities by giving notice to past customers who may, in the context of a competitive market wish to take their business elsewhere. In addition, prospective customers under the proposed modifications would be able to make an informal decision as to whom they should patronize.

It is too great a threat that the defendants will simply absorb the fines levied; which in Chelsea's case amounts to less than 20,000 per year and which may be treated as an acceptable business expense. The proposal to require that notice be given to present and prospective customers will provide a self executing oversight mechanism. At the same time it would allow customers to make a more informed business decision thereby facilitating the return of competitive equilibrium to a market which is totally dominated by the defendants.

To summarize, the Proposed Final Judgment and Competitive Impact Statement recognize the desired result. However, by failing to specifically prohibit illegal pricing activity in foreign markets, the door has been left open for the defendants to exert monopoly pressure on the U.S. shoe tape market. By including the additional requirements regarding notice to customers of the defendants propensity toward illegal pricing activity, the Final Order may indeed restore competition to the shoe tape industry. In its present form, however, the Proposed Final Judgment will not accomplish this purpose and is therefore not in the public interest as required under 15 USC § 16.

Respectfully submitted, Action Manufacturing, Inc., by its attorneys, Myers and Brown.

Howard B. Myers.

U.S. Department of Justice,
Washington, D.C., February 7, 1980.

Re United States v. Chelsea Industries, Inc., et al., Civil No. 78-3224-C (D. Massachusetts).

Howard B. Myers, Esquire,
Myers and Brown, Four Park Street, Concord, N.H.

Dear Mr. Myers: This letter will respond to the comments you have filed on behalf of Action Manufacturing, Inc., of Gonic, New Hampshire with regard to the proposed Final Judgment and Competitive Impact Statement in the above-captioned case.

Your letter essentially addresses two points: first, that the defendants in this case

excessively price and fix the prices of pressure sensitive tape products sold in foreign markets which influences the domestic market for such products; and secondly, that the notification provisions of the proposed Final Judgment are insufficient to restore competition to the domestic shoe tape industry.

Your first comment with regard to the defendants' foreign activities alleges that the defendants charge excessive prices and fix the prices of pressure sensitive tape products which they manufacture in the United States and sell abroad. You imply that because American manufacturers and retailers import more than fifty percent of the shoes sold in the United States, this results in higher domestic prices for shoes sold in this country and further entrenches the defendants' substantial domestic market position. These factors allegedly affect your client adversely.

In the first instance, it is important to recognize that both the criminal and civil cases filed against these defendants were virtually identical insofar as the substantive offense alleged. They were charged with fixing the prices of pressure sensitive tape products sold to the shoe industry throughout the United States. Both cases were strictly limited to the domestic market for two reasons. First, there were no substantiated allegations that the defendants' price-fixing activity extended beyond the United States. The second reason was that even if such illegal pricing activity did occur in foreign markets, jurisdiction in the United States seemed highly doubtful. The reasons for this are partly revealed by the limited scope of your comment. While your comment asserts that excessive pricing and price fixing by the defendants does occur in foreign markets, your letter does not provide any specific proof to substantiate your client's allegations. No evidence or detailed information of any kind has ever been presented to the Antitrust Division that would support these contentions. Moreover, assuming *arguendo* that the excessive pricing referred to does exist, no evidence has been presented that would indicate that this has resulted from collusion. In addition, if price fixing is occurring in foreign markets, there is no evidence to indicate that a conspiracy was formed in the United States or that the products affected ended up in the United States. Despite your reference to the fact that American manufacturers and retailers import more than fifty percent of all shoes sold in the United States, no information has been provided that would facilitate a determination of whether shoes which are imported into this country contain price-fixed materials sold by these defendants.

You also assert that the defendants have substantial market shares in the United States and that they are exercising monopoly pressure on your client in the United States by subsidizing domestic sales with profits from foreign sales. Once again, no evidence has been presented to substantiate this assertion. Assuming, however, that is true, if your client feels that it has been aggrieved by this action, you are free to seek redress by filing a monopolization case against the defendants in an appropriate jurisdiction, which I understand you have done. *Action*

Manufacturing, Inc. v. Chelsea Industries, Inc., Civil Action No. 78-36 (D. New Hampshire). Under these circumstances, it would appear that your client's rights will be adequately protected and that it will be given more than ample opportunity to air its complaints.

Based on the foregoing considerations, and in view of the allegations of the Complaint, it is clear that the modifications you have suggested would exceed the scope of the Complaint, the present jurisdiction of the Court, and would be legally inappropriate in the present circumstances.

Your second comment suggests that the notification provisions of the proposed Final Judgment and Competitive Impact Statement be modified to require the defendants to notify each of its existing customers and any new customers of the Final Judgment; that potential private plaintiffs may encourage state Attorneys General to sue on their behalf; and that the Final Judgment be published in shoe trade journals in the United States and abroad. These modifications will, allegedly, more fully restore competition to the domestic shoe tape industry.

As I am sure you can appreciate, the formulation of effective affirmative relief is a matter which depends on the facts and circumstances of each case. The overriding objective in every case is to restore competition to the industry in a manner which seems most likely to effectively counterbalance the specific type of offense that has been committed. In this case, where published prices were fixed by agreement between the defendants, our primary concern has been to find a way to assure that it does not occur again.

The most direct and effective method of correcting the price fixing that occurred in this case was the one outlined in Section VII, Paragraphs C., D. and E. of the proposed Final Judgment. These provisions require each defendant to withdraw its present prices, discounts and other terms and conditions of sale for pressure sensitive tape products sold in the United States, and to reformulate and republish new prices on the basis of and after an independent review of their costs, margins and other lawful considerations. This republication and all subsequent price changes for the next five years must be certified under oath; each company must file affidavits stating that price changes have been made only after an independent review by each company, in other words, not in collusion with each other or any other manufacturer. This is unquestionably the most direct way of reaching the heart of the problem. While your suggestion about notifying existing and new customers of the Final Judgment was carefully considered, we felt at the time that these provisions were drafted, and continue to believe, that they represent the most effective way of correcting the problem that was found in this particular case.

With regard to your suggestion that the Competitive Impact Statement be amended to provide that potential private plaintiffs can encourage state Attorneys General to sue the defendants on their behalf, we would remind you that potential plaintiffs are always free to do so, and state Attorneys General are free

to pursue appropriate legal action under Section 4C of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 15c, and their own state laws. We would also point out that neither the proposed Final Judgment nor the Competitive Impact Statement imposes any restriction, except as provided by law, on anyone who may be interested in redressing any grievance against these defendants arising from their illegal conduct.

Your final comment suggests that the Competitive Impact Statement should be modified to require advertising in shoe trade journals in the United States and abroad in soliciting comments about the proposed Final Judgment. It is our view that your request to enlarge the geographic scope from which comments on the proposed Final Judgment may be sought to include publication abroad, exceeds the express statutory language of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(c), and is not appropriate in this case since the offense charged occurred within the United States.

With regard to your suggestion that comments about the judgment be advertised in domestic shoe trade journals, we would bring to your attention the fact that these cases have already received considerable publicity.¹ In addition, the Antitrust Division has fully met its legal responsibility with regard to the solicitation of comments concerning the proposed Final Judgment in the case in compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(c).² In light of these facts, more than ample opportunity has been provided to anyone who wished to comment about these cases and the proceedings related thereto.

We appreciate your comments and suggestions about the proposed Final Judgment and Competitive Impact Statement in this case. However, we are satisfied that an objective analysis of the facts and circumstances would clearly establish that the proposed Final Judgment does contain effective remedial relief to correct the effects of the offense committed by these defendants and is in the public interest. For this reason, the Antitrust Division will urge the Court to enter the proposed Final Judgment as originally submitted.

¹ Listed below are the dates of articles published in the newspapers indicated about the case(s) concerning these defendants. We have also been advised that the disposition of the criminal case was reported in other major newspapers of general circulation, e.g., *New York Times*. It should be noted that the *Footwear News* is the principal newspaper of the domestic shoe industry.

May 9, 1978—Wall Street Journal
Dec. 15, 1978—Wall Street Journal
Dec. 15, 1978—Boston Globe
Jan. 1, 1979—Footwear News
Feb. 2, 1979—Boston Globe
Feb. 2, 1979—Boston Herald American
Feb. 6, 1979—Wall Street Journal
Feb. 12, 1979—Footwear News

² Information concerning the proposed Final Judgment and Competitive Impact Statement in this case was published in the following newspapers of general circulation on the dates indicated:

Dec. 12-18, 1979—Washington Star
Dec. 13-19, 1979—Boston Globe

Very truly yours,
Robert E. Bloch,
Attorney, Antitrust Division.
[FR Doc. 80-5320 Filed 2-20-80; 8:45 am]
BILLING CODE 4410-01-M

United States v. South Carolina Health Care Association, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16(b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement (CIS) have been filed with the United States District Court for the District of South Carolina in *United States of America v. South Carolina Health Care Association, Inc.*, Civil No. 79-1742-9. The complaint in this case alleged that the defendant engaged in a combination and conspiracy with others to raise the price of nursing home services in South Carolina paid under the Medicaid program.

The proposed Final Judgment enjoins the defendant from acting as an agent on behalf of its members in connection with any decision to accept or reject Medicaid provider contracts, or any part thereof. The defendant is also prohibited from participating in or furthering any agreement, understanding, plan or course of conduct having the purpose or foreseeable effect that nursing homes jointly determine to (1) accept or reject any or all of the terms of Medicaid provider contracts; (2) reject or discharge Medicaid patients; or (3) threaten not to participate in the Medicaid program. The defendant is further prohibited from advocating, recommending or inducing nursing homes to engage in any of the above mentioned activities. Finally, the defendant is prohibited from allowing at its meetings any course of conduct, or discussion of any plan, with the purpose or foreseeable effect that nursing homes, or any nursing home, accepts or rejects any terms of a Medicaid contract, rejects or discharges Medicaid patients, or threatens not to participate in the Medicaid program.

Except as otherwise prohibited by the proposed Final Judgment, the defendant may represent nursing homes, or any nursing home, in any *bona fide* judicial or administrative law proceeding; may represent nursing homes by advocating or discussing changes in the Medicaid program before any federal or state governmental body; and may disseminate factual information about the Medicaid program to nursing homes.

The proposed Final Judgment requires that the defendant furnish a copy of the

judgment to each of its members, as well as to new members as they join, together with a letter explaining its terms. Also, the defendant is required to furnish to the Court and the plaintiff an affidavit as to the fact and manner of its notification of its members and future members.

The proposed Final Judgment requires that thirteen months after entry of the judgment and every two years thereafter, the defendant audit its operations to determine compliance with the judgment and with the antitrust laws. Its findings must be filed with the Court and the plaintiff.

The proposed Final Judgment requires that the defendant adopt a written statement setting forth its policy regarding compliance with the antitrust laws and the judgment. The written compliance policy must be published in defendant's newsletter at least once a year for three consecutive years. The proposed Final Judgment expires ten years after entry.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the *Federal Register* and filed with the Court. Comments should be directed to John W. Poole, Jr., Chief, Special Litigation Section, Room 7218, Antitrust Division, Department of Justice, Washington, D.C. 20530, (telephone: (202) 633-2425).

Joseph H. Widmar,
Director of Operations.

U.S. District Court District of South Carolina,
Columbia Division

United States of America, Plaintiff, v. South Carolina Health Care Association, Inc., Defendant.

Civil Action No. 79-1742-9.

Filed: February 7, 1980.

Entered:

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent, or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be

without prejudice to any party in this or any other proceeding.

Dated: February 7, 1980.

For the Plaintiff: John H. Shenefield,
Assistant Attorney General; Mark Leddy,
Charles F.B. McAleer, John W. Poole, Jr.,
Charles S. Stark, Attorneys, Department of Justice;

For the Defendant: Thomas C. Fox, William O. Bittman, Pierson, Ball & Dowd 1000 Ring Building 1200 18th Street, NW, Washington, D.C. 20036. W. Stephen Cannon, John J. Miles, Attorneys, Department of Justice 10th & Pa. Avenue, N.W. Washington, D.C. 20530

U.S. District Court, District of South Carolina,
Columbia Division

United States of America, Plaintiff, v. South Carolina Health Care Association, Inc., Defendant.

Civil Action No. 79-1742-9.

Filed: February 7, 1980.

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on August 27, 1979, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon consent of the parties hereto, it is hereby,

Ordered, adjudged, and decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act (15 U.S.C. 1).

II

As used in this Final Judgment:

(A) "Defendant" means the South Carolina Health Care Association, Inc.;

(B) "Medicaid" means the system of health care for indigents created by Title XIX of the Social Security Act, entitled "Grants to States for Medical Assistance Programs," and includes regulations promulgated thereunder by the United States Department of Health, Education, and Welfare (HEW), and regulations, policies and procedures of South Carolina to implement the program;

(C) "Standard provider contracts" means contracts between the States of South Carolina and nursing homes by which nursing homes agree to provide care for Medicaid beneficiaries;

(D) "Nursing home" means a provider of skilled nursing and/or intermediate care services in the State of South Carolina.

III

This Final Judgment applies to the defendant and to its officers, directors, members, agents, employees, successors and assigns, and to all other persons in active concert or participation with any of them

who shall have received actual notice of this Final Judgment.

IV

The defendant is enjoined from:

(A) Acting as an agent for nursing homes in connection with any decision to accept or reject all of any terms of Medicaid standard provider contracts;

(B) Participating in or furthering any agreement, understanding, plan or course of conduct having the purpose or foreseeable effect that nursing homes jointly determine to (1) accept or reject all or any terms of Medicaid standard provider contracts; (2) reject or discharge Medicaid patients; or (3) threaten not to participate in the Medicaid program;

(C) Advocating or recommending that nursing home(s) (1) accept or reject all or any terms of Medicaid standard provider contracts; (2) reject or discharge Medicaid patients; or (3) threaten not to participate in the Medicaid program; and

(D) Causing or permitting at any formal or informal meeting of defendant or its committees any course of conduct, or discussion of any plan, having the purpose or foreseeable effect that nursing home(s) (1) accept or reject all or any terms of Medicaid standard provider contracts; (2) reject or discharge Medicaid patients; or (3) threaten not to participate in the Medicaid program.

V

Except as prohibited in Section IV, nothing herein shall prohibit defendant from:

(A) Representing nursing home(s) in any *bona fide* judicial or administrative law proceeding; or

(B) Advocating or discussing, on behalf of nursing home(s), proposed changes in the Medicaid program with any federal or state legislative body or executive agency, or any committee or member thereof; or

(C) Disseminating factual information about the Medicaid program to nursing homes.

VI

The defendant is ordered and directed:

(A) Within sixty (60) days from the entry of this Final Judgment.

(1) To send to each of its members

(a) A copy of this Final Judgment; and

(b) A letter identical in text to that attached to this Final Judgment as Appendix A;

(2) To cause the publication of this Final Judgment in the defendant's newsletter; and

(3) To file with this Court and to serve upon the plaintiff an affidavit stating the fact and manner of compliance with subsection (A) of this Section VI;

(B) To serve a copy of this Final Judgment, together with a letter identical in text to that attached to this Final Judgment as Appendix A, upon all of its future members at such time as they become members;

(C) To conduct an audit of its activities, during the thirteenth month following entry of this Final Judgment, and once during every twenty-four month period thereafter while this Final Judgment remains in effect, to determine compliance with this Final Judgment and with the antitrust laws. The audit shall be conducted or supervised by an

attorney and shall include a review of defendant's files and those of its directors maintained in connection with their responsibilities as such, and interviews of defendant's officers, directors, and employees as deemed necessary by the attorney. A written report of each audit shall be promptly prepared, furnished to plaintiff and filed with the court; and

(D) To establish and adopt a written statement setting forth defendant's policy regarding compliance with the antitrust laws and this Final Judgment. The written compliance policy shall be published in defendant's newsletter at least once a year for three consecutive years.

VII

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted:

(1) Access during office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant which may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees and agents of the defendant who may have counsel present, regarding any such matters;

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested;

(C) No information or documents obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment or as otherwise required by law; and

(D) If, at the time information or documents are furnished by the defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a grand jury

proceeding) to which the defendant is not a party.

IX

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

X

This Final Judgment will expire ten years after date of entry.

XI

Entry of this Final Judgment is in the public interest.

Dated:

United States District Court.

Appendix A

RE: *United States v. South Carolina Health Care Association, Inc.*, Civil No. 79-1742-9

Dear SCHCA Member: Enclosed is a copy of the Final Judgment, filed — 1979, in *United States v. South Carolina Health Care Association, Inc.*, Civil No. 79-1742-9. The terms of the Final Judgment require that a copy of it as well as this letter be sent to you. You should read the terms of the decree carefully and note that you, under certain circumstances, are bound by the provisions. The purpose of this letter is to help you understand those provisions.

Under the decree the Association is barred from participating in any plan or agreement which would result in nursing homes jointly threatening not to participate in the Medicaid program, as well as jointly determining to accept or reject all or part of the standard provider contracts, or to discharge Medicaid patients. The Final Judgment also prohibits the Association from causing or allowing nursing home representatives to discuss any of the above-mentioned actions at any formal or informal Association meetings, including committee meetings.

Finally, the Final Judgment prohibits the Association from acting as an agent on behalf of its members in connection with any decision to accept or reject Medicaid standard provider contracts.

U.S. District Court, District of South Carolina, Columbia Division

United States of America, Plaintiff, v. South Carolina Health Care Association, Inc., Defendant.

Civil Action No. 79-742-9.

Filed: February 7, 1980.

Competitive Impact Statement

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

I

Nature of the Proceeding

On August 27, 1979, the Department of Justice filed a civil antitrust complaint under Section 4 of the Sherman Act (15 U.S.C. 4), alleging that the defendant violated Section 1 of the Sherman Act (15 U.S.C. 1). The complaint alleges a combination and conspiracy consisting of a continuing agreement, understanding, and concert of action among the defendant and various co-conspirators to raise the price of nursing home services in South Carolina paid under the Medicaid program.

Entry of the proposed final judgment will terminate the action, except that the Court will retain jurisdiction over the matter for further proceedings which may be required to interpret, modify or enforce the judgment, or to punish violations of any of its provisions.

II

Description of the Practices Involved in the Alleged Violation

The defendant is a trade association for the nursing home industry in South Carolina. Approximately 85 nursing homes throughout the state, representing over 80 per cent of all nursing home beds in South Carolina, are "institutional" members of the defendant. In addition, numerous individuals associated with nursing homes are "personal" members.

The complaint alleges that the defendant and co-conspirators engaged in a conspiracy, from sometime in 1973 to the present, to raise the price of nursing home services paid under the Medicaid program in South Carolina. The complaint further alleges that to raise the price of Medicaid nursing home services, the defendant acted as the bargaining agent of its member nursing homes to negotiate and approve or disapprove Medicaid reimbursement contracts with the state on their behalf. The complaint also alleges that the defendant's member nursing homes jointly refused to enter into contracts with the state to care for Medicaid patients except upon terms and conditions that had been agreed upon by the defendant and its members. The market area alleged to have been affected by the conspiracy is the State of South Carolina.

The complaint alleges that the conspiracy has had the following effects, among others: (a) Competition among nursing homes with respect to the terms and conditions on which they will contract to care for Medicaid patients has been eliminated, and (b) prices charged by nursing homes for the care of Medicaid patients have been increased.

Had this case gone to trial, the United States would have adduced evidence to show that, beginning sometime in 1973, the defendant and co-conspirators began to use the defendant as the bargaining agent for nursing homes in negotiating Medicaid contracts with the State of South Carolina. The United States believes the evidence would have shown that, since 1973, the defendant has acted on behalf of its members in accepting or rejecting all or part of various Medicaid provider contracts, and used the joint bargaining strength of its member nursing homes to obtain more favorable contract terms and conditions than otherwise

would have been possible; the conspiracy was effectuated in numerous meetings of the defendant's membership, meetings of various committees formed by the defendant for the purpose of negotiating Medicaid contracts with the State, and in meetings between representatives of the defendant and representatives of the State.

III

Explanation of the Proposed Final Judgment

The United States and the defendant have stipulated that the Court may enter the proposed final judgment after compliance with the Antitrust Procedures and Penalties Act. The stipulation provides that neither party has made any admission about any issue of fact or law. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, the proposed final judgment may not be entered until the Court determines that entry is in the public interest.

A. Prohibited Conduct

The proposed final judgment prohibits the defendant from acting as an agent on behalf of its members in connection with any decision to accept or reject Medicaid provider contracts, or any part thereof. The defendant is also prohibited from participating in or furthering any agreement, understanding, plan or course of conduct having the purpose or foreseeable effect that nursing homes jointly determine to (1) accept or reject any or all of the terms of Medicaid provider contracts; (2) reject or discharge Medicaid patients; or (3) threaten not to participate in the Medicaid program. The defendant is further prohibited from advocating, recommending or inducing nursing homes to engage in any of the above mentioned activities. Finally, the defendant is prohibited from allowing at its meetings any course of conduct, or discussion of any plan, with the purpose or foreseeable effect that nursing homes, or any nursing home, accepts or rejects any terms of the Medicaid contract, rejects or discharges Medicaid patients, or threatens not to participate in the Medicaid program.

Except as otherwise prohibited by the proposed final judgment, the defendant may represent nursing homes, or any nursing home, in any *bona fide* judicial or administrative law proceeding; may represent nursing homes by advocating or discussing changes in the Medicaid program before any federal or state governmental body; and may disseminate factual information about the Medicaid program to nursing homes.

The proposed final judgment requires that the defendant furnish a copy of the judgment to each of its members, as well as to new members as they join, together with a letter explaining its terms. Also, the defendant is required to furnish to the Court and the plaintiff an affidavit as to the fact and manner of its notification of its members and future members.

The proposed final judgment requires that thirteen months after entry of the judgment and every two years thereafter, the defendant audit its operations to determine compliance with the judgment and with the antitrust laws. Its findings must be filed with the Court and the plaintiff.

The proposed final judgment requires that the defendant adopt a written statement setting forth its policy regarding compliance with the antitrust laws and the judgment. The written compliance policy must be published in defendant's newsletter at least once a year for three consecutive years.

B. Scope of the Proposed Judgment

The proposed final judgment will remain in effect for a period of ten years from entry. It applies to the defendant and to each of its officers, directors, members, agents, employees, successors and assigns, and to all other persons in actual concert or participation with any of them who receive actual notice of the judgment.

C. Effect of the Proposed Judgment on Competition

The relief in the proposed final judgment is designed to prevent any recurrence of the activities alleged in the complaint. The prohibitive language of the judgment should insure that each nursing home's decision whether to provide services under the Medicaid program will be made independently by it, without agreements among competitors and between competitors and their trade association.

The proposed final judgment provides two methods for determining the defendant's compliance with its terms. First, the United States is given access, upon reasonable notice, to the records of the defendant to examine them for possible violations of the judgment, and to interview officers, directors, employees and agents of the defendant. Second, the United States may require the defendant to submit written reports about any matters pertaining to the judgment.

The Department of Justice believes that the proposed final judgment contains adequate provisions to prevent further violations by the defendant of the type upon which this complaint is based. The Department believes that disposition of the lawsuit without further litigation is appropriate because the proposed judgment provides all the relief which the United States sought in its complaint, and the additional expense of litigation would not result in additional public benefit.

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 suffered, as well as costs and reasonable attorneys fees. Entry of the proposed final judgment will neither impair nor assist the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the judgment has no *prima facie* effect in any subsequent lawsuits that may be brought against this defendant.

V

Procedures Available for Modification 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 John W. Poole, Jr., Antitrust Division, United States Department of Justice, 10th & Penn. Ave., NW., Washington, D.C. 20530 within the 60-day period provided by the Act. These comments, and the Department's responses, 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 judgment at any time prior to entry. The judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for its modification, interpretation or enforcement.

VI

Alternatives to the Proposed Consent Judgment

This case does not involve any unusual or novel issues of fact or law which might make litigation a more desirable alternative than entry of this final judgment. The Department considers the substantive language of the judgment to be of sufficient scope and effectiveness to make litigation on relief unnecessary, as the judgment provides all relief which reasonably could have been expected after trial.

VII

Other Materials

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)) were considered in formulating the proposed final judgment.

Dated: February 7, 1980.

W. Stephen Cannon.

John J. Miles,

Attorneys, Department of Justice, 10th & Pa. Ave., NW., Washington, D.C. 20530, Telephone: (202) 633-2836.

[FR Doc. 80-5321 Filed 2-20-80; 8:45 am]

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LEGAL SERVICES CORPORATION

Grants and Contracts

February 14, 1980.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355a, 88 Stat. 378, 42 U.S.C. 2996-2996f, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract, or project * * *."

The Legal Services Corporation hereby announces publicly that it is considering the grant application submitted by:

Kalamazoo and Van Buren County Legal Aid Bureau in Kalamazoo, Michigan, to serve St. Joseph County.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at: Legal Services Corporation, North Virginia Regional Office, 1730 N. Lynn Street, Arlington, Va. 22209.

Dan J. Bradley,

President.

[FR Doc. 80-5307 Filed 2-20-80; 8:45 am]

BILLING CODE 6820-35-M

Grants and Contracts

February 14, 1980.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355a, 88 Stat. 378, 42 U.S.C. 2996-2996f, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract, or project * * *."

The Legal Services Corporation hereby announces publicly that it is considering the grant application submitted by:

California Indian Legal Services in Oakland, Calif., to serve Alpine County.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at: Legal Services Corporation, San Francisco Regional Office, 177 Post Street, Suite 890, San Francisco, Calif. 94104.

Dan J. Bradley,

President.

[FR Doc. 80-5308 Filed 2-20-80; 8:45 am]

BILLING CODE 6820-35-M

Grants and Contracts

February 14, 1980.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355a, 88 Stat. 378, 42 U.S.C. 2996-2996f, as amended, Pub. L. 93-222 (December 28, 1977). Section 1007(f) provides: "At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract, or project * * *."

The Legal Services Corporation hereby announces publicly that it is

considering the grant application submitted by:

Kansas Legal Services in Topeka, Kansas, to serve Anderson, Chase, Cheyenne, Coffey, Decatur, Dickinson, Ellsworth, Gove, Marion, Marshall, Osborne, Rawlins, Sheridan, Smith, Trego and Washington Counties.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at: Legal Services Corporation, Chicago Regional Office, 310 South Michigan Avenue, 24th Floor, Chicago, Illinois 60604.

Dan J. Bradley,

President.

[FR Doc. 80-5309 Filed 2-20-80; 8:45 am]

BILLING CODE 6820-35-M

Grants and Contracts

February 14, 1980.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355a, 88 Stat. 378, 42 U.S.C. 2996-2996f, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract, or project * * *."

The Legal Services Corporation hereby announces publicly that it is considering the grant application submitted by:

Legal Aid of Southwest Missouri in Springfield, Missouri, to service Cedar, Dade, Dallas, Douglas, Howell, Laclede, Oregon, Ozark, Polk, Shannon, Texas and Wright Counties.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at: Legal Services Corporation, Chicago Regional Office, 310 South Michigan Avenue, 24th Floor, Chicago, Illinois 60604.

Dan J. Bradley,

President.

[FR Doc. 80-5310 Filed 2-20-80; 8:45 am]

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Grants and Contracts

February 14, 1980.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355a, 88 Stat. 378, 42 U.S.C. 2996-2996f, as amended, Pub. L. 95-222