



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

January 15, 2002

Bruce J. Prager, Esq.
E. Marcellus Williamson, Esq.
Latham & Watkins
555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304
Counsel for Libbey, Inc.

Re: *FTC v. Libbey, Inc., and Newell Rubbermaid, Inc.*
Case No. 1:02CV00060
United States District Court for the District of Columbia

Dear Mr. Prager and Mr. Williamson:

On December 18, 2001, the Federal Trade Commission determined to file a federal district court complaint for preliminary injunction, pursuant to Section 13(b) of the Federal Trade Commission Act, against Libbey, Inc. and Newell Rubbermaid, Inc. I have enclosed copies of the Commission news releases describing that action, and of the Commission complaint, which was filed on January 14, 2002.

The Commission has also designated this matter as appropriate for the fast track schedule, pursuant to and as set forth in Rule 3.11A of the Commission Rules of Practice, 16 C.F.R. § 3.11A (2001). If either of the conditions specified by Rule 3.11A(b)(1) is satisfied, each respondent in an administrative case covered by Rule 3.11A(a) will have the option to elect the Rule 3.11A fast track procedures.¹ A respondent that determines to elect Rule 3.11A fast track procedures shall file a notice of such election by the latest of:

- (1) three days after entry of a preliminary injunction as described in Rule 3.11A(b)(1)(i);
- (2) three days after the respondent is served with notice of the Commission's determination under Rule 3.11A(b)(1)(ii); or

¹ 16 C.F.R. § 3.11A(b)(1). In an administrative proceeding involving multiple respondents, the fast track procedures will not apply unless the procedures are elected by all respondents. *Id.* § 3.11A(b)(2).

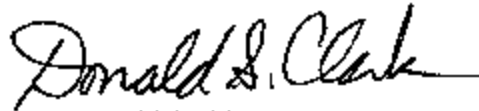
- (3) three days after the respondent is served with the Commission's administrative complaint in the adjudicative proceeding.²

The notice of such an election shall be filed with the Office of the Secretary, at the following address:

Office of the Secretary
Federal Trade Commission
Room 159-H
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Any questions regarding this filing procedure should be directed to Mr. Richard C. Donohue, Attorney, Office of the Secretary, at (202) 326-3112.

By direction of the Commission.



Donald S. Clark
Secretary

Enclosures

cc: The Honorable James P. Timony
Chief Administrative Law Judge

Joseph J. Simons, Director
Bureau of Competition
Federal Trade Commission

William E. Kovacic
General Counsel
Federal Trade Commission

Richard C. Donohue, Attorney
Office of the Secretary

² *Id.* § 3.11A(b)(2).



UNITED STATES OF AMERICA
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WASHINGTON, D.C. 20580

Office of the Secretary

January 15, 2002

William S. D'Amico
Chadbourne & Parke
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036
Counsel for Newell Rubbermaid, Inc.

Re: *FTC v. Libbey, Inc., and Newell Rubbermaid, Inc.*
Case No. 1:02CV00060
United States District Court for the District of Columbia

Dear Mr. D'Amico:

On December 18, 2001, the Federal Trade Commission determined to file a federal district court complaint for preliminary injunction, pursuant to Section 13(b) of the Federal Trade Commission Act, against Libbey, Inc. and Newell Rubbermaid, Inc. I have enclosed copies of the Commission news releases describing that action, and of the Commission complaint, which was filed on January 14, 2002.

The Commission has also designated this matter as appropriate for the fast track schedule, pursuant to and as set forth in Rule 3.11A of the Commission Rules of Practice, 16 C.F.R. § 3.11A (2001). If either of the conditions specified by Rule 3.11A(b)(1) is satisfied, each respondent in an administrative case covered by Rule 3.11A(a) will have the option to elect the Rule 3.11A fast track procedures.¹ A respondent that determines to elect Rule 3.11A fast track procedures shall file a notice of such election by the latest of:

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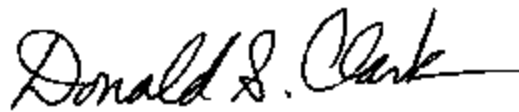
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² *Id.* § 3.11A(b)(2).



Federal Trade Commission
Washington, D.C.

For Release: December 18, 2001

Related Documents:

FTC to Challenge Libbey's Acquisition of Anchor Hocking

Promoting Competition,
 Protecting Consumers: A
 Plain English Guide to
 Antitrust Laws

The Federal Trade Commission has voted to seek a preliminary injunction to block Libbey, Inc.'s (Libbey) proposed \$332 million acquisition of Anchor Hocking, (Anchor) a wholly-owned subsidiary of Newell Rubbermaid, Inc. Libbey is the largest maker and seller of soda-lime glassware to the U.S. food service industry, with more than half of all food service glassware sales. Anchor is the third-largest seller of food service glassware. According to the FTC, the acquisition, if consummated, would eliminate the existing substantial competition between Libbey and Anchor, and would substantially reduce competition in the market for soda-lime glassware sold to the food service industry in the United States. The FTC anticipates that it will file its motion for a preliminary injunction in U.S. District Court in Washington, D.C. no later than Friday, December 21, 2001.

"The market for food service soda-lime glassware is highly concentrated and would become even more so if this acquisition were to proceed," said Joseph J. Simons, Director of the FTC's Bureau of Competition. "The acquisition would combine the dominant firm in the market with its closest competitor."

Libbey is a Delaware corporation with its principal place of business in Toledo, Ohio. Newell Rubbermaid, Inc., also a Delaware corporation, has its principal place of business in Freeport, Illinois. Anchor Hocking is based in Lancaster, Ohio.

Libbey produces and sells soda-lime glassware, a line of products that includes many different styles of tumblers and stemware for beverages, and other products ranging from serving platters to candle holders. Libbey produces and sells soda-lime glassware, among other segments, to food service customers, including distributors who resell soda-lime glassware to restaurants, hotels, and other food service establishments. Anchor is the third-largest maker and seller of soda-lime glassware to the U.S. food service industry.

According to the FTC, Libbey and Anchor are direct and actual competitors in the sale of soda-lime glassware to the food service industry. They compete with each other on price by, among other things, offering discounts and other promotions on the sale of their soda-lime glassware. Anchor prices and discounts its products in response to Libbey's pricing, and in order to take sales from Libbey. Anchor has succeeded in taking food service glassware sales from Libbey by offering lower prices to food service customers and distributors.

The FTC's complaint will allege that, if consummated, the acquisition would combine the largest and third-largest sellers of soda-lime glassware to the food service industry in the United States, substantially increasing

to the food service industry in the United States, substantially increasing concentration in the market for soda-lime glassware for the food service industry in the U.S. Further, the FTC will allege that the acquisition would result in a highly concentrated market and would eliminate the existing substantial competition between Libbey and Anchor. In addition, the complaint will allege that the acquisition would substantially reduce competition and tend to create a monopoly in the market for soda-lime glassware for the food service industry in the United States.

Finally, the complaint will charge that the reestablishment of Anchor as an independent viable competitor in the relevant market if the acquisition were consummated would be difficult, and there is a substantial likelihood that it would be difficult or impossible to restore Anchor's business as it originally existed.

Today's action authorizes Commission staff to seek a federal district court order to prevent the proposed acquisition by Libbey of Anchor. The FTC has authorized the staff filing of a motion for preliminary injunction on the grounds that the transaction as structured would violate federal antitrust laws. If the court grants the FTC's motion, the Commission will have 20 days within which to determine whether to issue an administrative complaint. The FTC vote authorizing staff to file the suit was 5-0.

Copies of the complaint will be available upon filing in federal court from the FTC's Web site at <http://www.ftc.gov> and also from the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC's Bureau of Competition seeks to prevent business practices that restrain competition. The Bureau carries out its mission by investigating alleged law violations and, when appropriate, recommending that the Commission take formal enforcement action. To notify the Bureau concerning particular business practices, call or write the Office of Policy and Evaluation, Room 394, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Ave, N.W., Washington, D.C. 20580, Electronic Mail: antitrust@ftc.gov; Telephone (202) 326-3300. For more information on the laws that the Bureau enforces, the Commission has published "Promoting Competition, Protecting Consumers: A Plain English Guide to Antitrust Laws," which can be accessed at <http://www.ftc.gov/bc/compguide/index.htm>.

MEDIA CONTACT:

Howard Shapiro
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202-326-2176

STAFF CONTACT:

Richard Liebeskind
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202-326-2441

(FTC File No.: 011 0194)

(<http://www.ftc.gov/ops/2001/12/libbey.htm>)



Federal Trade Commission
440 Pennsylvania Avenue, NW
Washington, DC 20540

For Your Information: January 14, 2002

Related Documents

FTC v. Libbey, Inc. and Newell Rubbermaid, Inc.

FTC v. Libbey, Inc. and Newell Rubbermaid, Inc. (District Court for District of Columbia)

The Federal Trade Commission today filed its complaint for a preliminary injunction to block Libbey, Inc.'s (Libbey) proposed \$332 million acquisition of Anchor Hocking (Anchor), a wholly-owned subsidiary of Newell Rubbermaid, Inc. (See FTC news release dated December 18, 2001; staff contact is Morris A. Bloom, 202-326-2707.) The complaint was filed in the U.S. District Court for the District of Columbia, and has been assigned to Judge Reggie B. Walton.

Complaint for Preliminary Injunction Pursuant to Section 13(b) of the Federal Trade Commission Act [PDF 317K]



MEDIA CONTACT:

Howard Shapiro
Office of Public Affairs
202-326-2176

(Civil Action No.: 1: 02CV00060)

(<http://www.ftc.gov/opa/2002/01/fyi0204.htm>)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION,
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580,

Plaintiff,

v.

LIBBEY, INC.,
300 Madison Avenue
Toledo, Ohio 43699-0060

and

NEWELL RUBBERMAID, INC.,
29 East Stephenson Street
Freeport, Illinois 61032

Defendants.

CASE NUMBER 1:02CV00060

JUDGE: Reggie B. Walton

DECK TYPE: Antitrust

DATE STAMP: 01/14/2002

COMPLAINT FOR
PRELIMINARY INJUNCTION
PURSUANT TO SECTION 13(b)
OF THE FEDERAL TRADE
COMMISSION ACT

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), by its designated attorneys, for its complaint herein, petitions the Court, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), for a preliminary injunction enjoining defendant Libbey, Inc. ("Libbey"), including its domestic and foreign agents, divisions, parents, subsidiaries, affiliates, partnerships, and joint ventures, from acquiring, through a merger or otherwise, any stock, assets, or other interest, either directly or indirectly, of Anchor Hocking Corporation ("Anchor") from defendant Newell Rubbermaid, Inc. ("Newell Rubbermaid"), or their domestic and foreign agents, divisions, parents, subsidiaries, affiliates, partnerships, or joint ventures; thereby maintaining the status quo during the pendency of an administrative proceeding, challenging defendant Libbey's proposed

acquisition of the soda-lime glassware businesses of Anchor and Newell Rubbermaid, that will be commenced by the Commission pursuant to Section 5 of the FTC Act, 15 U.S.C. § 45, and Sections 7 and 11 of the Clayton Act, 15 U.S.C. §§ 18 and 21; and alleges:

Jurisdiction and Venue

1. Jurisdiction is based on Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and 28 U.S.C. §§ 1337 and 1345. Venue is proper under Section 13(b) of the FTC Act; 28 U.S.C. § 1391(b) and (c); and Section 12 of the Clayton Act, 15 U.S.C. § 22.

The Parties

2. The Commission is an administrative agency of the United States Government established, organized, and existing pursuant to the Federal Trade Commission Act, 15 U.S.C. § 41, *et seq.*, with its principal offices at 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The Commission is vested with authority and responsibility for enforcing, *inter alia*, Section 7 of the Clayton Act and Section 5 of the FTC Act.

3. Defendant Libbey, Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 300 Madison Avenue, Toledo, Ohio 43699-0060.

4. Defendant Newell Rubbermaid, Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 29 East Stephenson Street, Freeport, Illinois 61032. Anchor is an indirect, wholly-owned subsidiary of Newell Rubbermaid.

5. Defendants are each engaged in commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

Section 13(b) of the FTC Act

6. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), provides in pertinent part:

(b) Whenever the Commission has reason to believe --

(1) that any person, partnership or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and

(2) that the enjoining thereof pending the issuance of a complaint by the Commission and until such complaint is dismissed by the Commission or set aside by the court on review, or until the order of the Commission made thereon has become final, would be in the interest of the public --

the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States to enjoin any such act or practice. Upon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond

The Proposed Acquisition and the Commission's Response

7. Pursuant to a Stock Purchase Agreement dated June 17, 2001, Libbey proposes to acquire all the assets of Anchor from Newell Rubbermaid (the "acquisition").

8. On December 18, 2001, the Commission authorized the commencement of an action under Section 13(b) of the FTC Act to seek a preliminary injunction barring the acquisition during the pendency of administrative proceedings.

9. The acquiring entity, Libbey, has assured the Commission that it will not consummate the acquisition until the Court has ruled on Plaintiff's motion for a preliminary injunction, except on 10-days prior notice to the Commission.

10. In authorizing the commencement of this action, the Commission determined that such an injunction is in the public interest and that it has reason to believe that the

acquisition would violate Section 7 of the Clayton Act and Section 5 of the FTC Act because the acquisition may substantially lessen competition and/or tend to create a monopoly in the relevant market, i.e., soda-lime glassware sold to the food service industry in the U.S.

The Acquisition Would Substantially Lessen Competition

11. Libbey is the largest maker and seller of food service glassware in the U.S., with substantially more than half of the sales. Libbey produces and sells food service glassware, a line of products that includes many different styles of tumblers and stemware for beverages, and other glassware products ranging from serving platters to candle holders. Libbey produces and sells glassware, among other segments, to food service customers, including distributors who resell soda-lime glassware to restaurants, hotels and other food service establishments.

12. Libbey has engaged in conduct to exclude competitors who threaten Libbey's position as the largest maker and seller of food service glassware, including Anchor. Libbey has threatened to penalize food service distributors with the loss of significant rebates for selling glassware produced by rival manufacturers, including Anchor, that have the same appearance as Libbey's food service glassware. Libbey has also commenced litigation against another firm that produces glassware that appears identical to Libbey's food service glassware in an attempt to prevent the competitor from entering the U.S. food service glassware market.

13. Anchor is the third largest maker and seller of food service glassware in the U.S.

14. Libbey and Anchor are direct and actual competitors in the manufacture and sale of food service glassware. They compete with each other on price by, among other things, offering discounts and other promotions on the sale of their food service glassware. Anchor prices and discounts its food service glassware in response to Libbey's pricing, and in order to take sales from Libbey. Anchor has succeeded in taking food service glassware sales from Libbey by offering lower prices to food service customers and distributors.

15. The acquisition would combine the largest and third largest manufacturers and sellers of food service glassware in the U.S., substantially increasing concentration in the food service glassware market, would result in a highly concentrated market, would eliminate the existing substantial competition between Libbey and Anchor, and would substantially reduce competition and tend to create a monopoly in the market for food service glassware in the U.S.

Likelihood of Success on the Merits and Need for Relief

16. The Commission is likely ultimately to succeed in demonstrating, in administrative proceedings to adjudicate the legality of the acquisition, that the acquisition would violate Section 7 of the Clayton Act and Section 5 of the FTC Act. In particular, the Commission is likely ultimately to succeed in demonstrating, *inter alia*, that:

- a. The relevant product market in which the competitive effects of the proposed merger may be assessed is food service glassware.
- b. The relevant geographic market within which to assess the competitive effects of the proposed merger is the United States. Only those firms that have made

the substantial investments to manufacture and sell food service glassware are current or likely future competitors in the relevant market.

c. The effect of the acquisition, if consummated, may be substantially to lessen competition and tend to create a monopoly in the relevant market by, among other things, eliminating an effective competitor, and eliminating or reducing substantial actual competition between Libbey and Anchor, thereby increasing the likelihood of anticompetitive activity in the relevant market once this acquisition is consummated.

17. The reestablishment of Anchor as an independent viable competitor in the relevant market if the acquisition were consummated would be difficult, and there is a substantial likelihood that it would be difficult or impossible to restore Anchor's business as it originally existed. Furthermore, it is likely that substantial interim harm to competition would occur even if suitable divestiture remedies could be devised.

18. For the reasons stated above, the granting of the injunctive relief sought is in the public interest.

WHEREFORE, the Commission requests that the Court:

1. Preliminarily enjoin defendant Libbey, and all its affiliates, from taking any further steps to consummate, directly or indirectly, the Acquisition of assets of Anchor from defendant Newell Rubbermaid, or any other acquisition of stock, assets, or other interest, either directly or indirectly, of Anchor;

2. Maintain the status quo pending the issuance of an administrative complaint by the Commission challenging such acquisition, and until such complaint is dismissed by the

Commission or set aside by a court on review, or until the order of the Commission made thereon has become final; and

3. Award such other and further relief as the Court may determine to be proper and just, including costs.

January 14, 2002

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