

IN THE MATTER OF

NIPPON SHEET GLASS COMPANY, LTD., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3298. Complaint, July 26, 1990—Decision, July 26, 1990*

This consent order requires, among other things, the float glass manufacturers to repeal the challenged portion of the Float Glass Capacity Agreement. In addition, the consent agreement prohibits respondents from entering into any agreement which has the purpose or effect of restraining competition by either limiting float glass manufacturing capacity in North America or restricting imports to North America.

Appearances

For the Commission: *Robert W. Doyle, Jr.* and *James C. Egan, Jr.*

For the respondents: *Robert S. Scholsberg* and *Caswell O. Hobbs, III, Morgan, Lewis & Bockius*, Washington, D.C. and *Bruce D. Sokler, Mintz, Levin, Cohn, Ferris, Glovsky & Popep*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that respondent Nippon Sheet Glass Company, Ltd. ("Nippon") and its subsidiary, respondent NSG Holding USA, Inc. ("NSG-USA"), corporations subject to the jurisdiction of the Commission, have pursuant to a Common Stock Purchase Agreement ("Purchase Agreement"), offered to purchase approximately 20% of the stock or voting securities of respondent Libbey-Owens-Ford Co., ("LOF"), a subsidiary of respondent Pilkington plc ("Pilkington") and said Purchase Agreement constitutes a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows:

I. DEFINITIONS

1. For the purposes of this complaint, the following definitions apply:

a. "*Nippon*" means respondent Nippon Sheet Glass Company, Ltd., as well as its officers, employees, agents, divisions, subsidiaries (including but not limited to NSG-USA), successors, assigns, and the officers, employees, or agents of Nippon's divisions, subsidiaries, successors and assigns.

b. "*NSG-USA*" means respondent NSG Holding USA, Inc., a wholly owned subsidiary of Nippon, as well as its officers, employees, agents, divisions, subsidiaries, successors, assigns, and the officers, employees, or agents of NSG-USA's divisions, subsidiaries, successors and assigns.

c. "*Pilkington*" means respondent Pilkington plc, as well as its officers, employees, agents, divisions, subsidiaries (including but not limited to LOF), successors, assigns, and the officers, employees or agents of Pilkington's divisions, subsidiaries, successors and assigns.

d. "*LOF*" means respondent Libbey-Owens-Ford Co., a wholly owned subsidiary of Pilkington, as well as its officers, employees, agents, divisions, subsidiaries, successors, assigns, and the officers, employees or agents of LOF's divisions, subsidiaries, successors and assigns.

e. "*Capacity Agreement*" means the Float Glass Capacity Agreement which is Exhibit E to the Common Stock Purchase Agreement between and among Respondents, dated May 21, 1989.

f. "*Float glass*" means either clear or tinted flat glass manufactured by floating molten glass over a bed of molten material or materials.

II. THE PARTIES

2. Respondent Nippon is a corporation organized, existing, and doing business under and by virtue of the laws of Japan with its principal offices at 5-11, Doshomacho 3-chome, Chuo-Ku, Osaka, Japan.

3. Respondent Nippon is, and at all times relevant herein has been, a corporation whose business is affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

4. Respondent NSG-USA, a wholly owned subsidiary of respondent

Nippon, is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1209 Orange Street, Wilmington, Delaware.

5. Respondent NSG-USA is, and at all times relevant herein has been, a corporation whose business is affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

6. Respondent Pilkington is a corporation organized, existing, and doing business under and by virtue of the laws of England with its principal offices at Prescott Road, St. Helens, Merseyside, England WA10 3TT.

7. Respondent Pilkington is, and at all times relevant herein has been, a corporation whose business is affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

8. Respondent LOF, a wholly owned subsidiary of respondent Pilkington, is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal place of business at 811 Madison Avenue, Toledo, Ohio.

9. Respondent LOF is, and at all times relevant herein has been, a corporation whose business is affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

III. THE AGREEMENTS

10. Pursuant to a Common Stock Purchase Agreement with respondent Pilkington and respondent LOF dated May 21, 1989, respondent Nippon, through respondent NSG-USA, agreed to purchase approximately 20% of respondent LOF's stock or voting securities.

11. The Capacity Agreement, if enforced, would prohibit both respondent Nippon and respondent Pilkington from building or acquiring capacity for the production or fabrication of float or other flat glass except through respondent LOF for a period of five (5) years.

IV. COMPETITION

12. Respondent Nippon is engaged in the manufacture and sale of float glass. Respondent Pilkington is engaged in the manufacture and sale of float glass. Respondents Nippon and Pilkington are engaged in the sale of float glass in North America.

V. EFFECTS

13. The purpose and effect of the Capacity Agreement, if enforced, may be to unreasonably restrain competition in the manufacture, sale and fabrication of float glass in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

VI. VIOLATIONS CHARGED

14. The Capacity Agreement violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and would, if enforced, constitute an unfair method of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof relating to the proposed acquisition of certain stock or voting securities of Libbey-Owens-Ford Co. ("LOF"), a subsidiary of Pilkington plc ("Pilkington") by NSG Holding USA, Inc. ("NSG-USA"), a subsidiary of Nippon Sheet Glass Company, Ltd. ("Nippon"), pursuant to a Common Stock Purchase Agreement, and respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record

for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, not in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Nippon is a corporation organized, existing and doing business under the laws of Japan, with its office and principal place of business located at 5-11, Doshomacho 3-chome, Chuo-Ku, Osaka, Japan.

2. Respondent NSG-USA, a wholly owned subsidiary of proposed respondent Nippon, is a corporation organized, existing and doing business under the laws of Delaware, with its office and principal place of business located at 1209 Orange Street, Wilmington, Delaware.

3. Respondent Pilkington is a corporation organized, existing and doing business under the laws of England, with its office and principal place of business located at Prescott Road, St. Helens, Merseyside, England WA10 3TT.

4. Respondent LOF, a wholly owned subsidiary of proposed respondent Pilkington, is a corporation organized, existing and doing business under the laws of Delaware, with its office and principal place of business located at 811 Madison Avenue, Toledo, Ohio.

5. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

For the purposes of this order the following definitions shall apply:

1. "*Nippon*" means respondent Nippon Sheet Glass Company, Ltd., as well as its officers, employees, agents, divisions, subsidiaries (including but not limited to NSG-USA), successors, assigns, and the officers, employees, and agents of Nippon's divisions, subsidiaries, successors and assigns.

2. "*NSG-USA*" means respondent NSG Holding USA, Inc., as well as its officers, employees, agents, divisions, subsidiaries, successors, assigns, and the officers, employees, and agents of NSG-USA's divisions, subsidiaries, successors and assigns.

3. "*Pilkington*" means respondent Pilkington plc, as well as its officers, employees, agents, divisions, subsidiaries (including but not limited to LOF), successors, assigns, and the officers, employees and agents of Pilkington's divisions, subsidiaries, successors and assigns.

4. "*LOF*" means respondent Libbey-Owens-Ford Co., as well as its officers, employees, agents, divisions, subsidiaries, successors, assigns, and the officers, employees and agents of LOF's divisions, subsidiaries, successors and assigns.

5. "*Respondents*" means Nippon, NSG-USA, Pilkington, and LOF.

6. "*Float glass*" means either clear or tinted flat glass manufactured by floating molten glass over a bed of molten material or materials.

7. "*Capacity Agreement*" means the Float Glass Capacity Agreement which is Exhibit E to the Common Stock Purchase Agreement between and among respondents, dated May 21, 1989.

8. "*ASEAN Agreement*" means the ASEAN Float License Agreement between Nippon and Pilkington, dated August 8, 1983.

9. "*North America*" means the United States, Canada and Mexico.

I.

It is ordered, That respondent Nippon and respondent Pilkington, directly or indirectly, or through any corporate or other device, in or in connection with the offering for sale, sale or manufacture of float glass in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, shall cease and desist from entering into, cooperating in or carrying out any agreement, combination, conspiracy, understanding or planned common course of action with each other which has the purpose or effect of:

A. Prohibiting, restricting, or otherwise restraining the building, expanding, acquiring, reducing or otherwise limiting float glass manufacturing capacity in North America, *provided that*, nothing in this order shall be construed to prohibit Nippon and Pilkington in connection with the operation of respondent LOF from jointly making decisions relating to the float glass manufacturing capacity of LOF; or

B. Prohibiting, restricting, or otherwise restraining the importation of float glass to North America, *provided that*, this order shall not be construed to affect the ASEAN Agreement between Nippon and Pilkington.

II.

It is further ordered, That respondents shall abrogate, delete and otherwise cease and desist from enforcing paragraph 2(3) of the Capacity Agreement.

III.

It is further ordered, That respondent Pilkington shall, upon written request of respondent Nippon, license to Nippon technology sufficient to enable Nippon to manufacture and sell float glass in North America and to export such float glass to Japan. Such license shall be on terms and conditions and with the scope at least as favorable to Nippon as those contained in the ASEAN Agreement, *provided that:*

A. (1) Pilkington shall in such new license agreement be entitled to adjust the amount of license payments contained in such new license agreement from those contained in the ASEAN Agreement to account for inflation as measured by the change in the United States Consumer Price Index from August 1983 until the effective date of the new license; (2) Pilkington shall not be obligated to enter into any provision in such new license that conflicts with Article VIII ("Restriction on Manufacture of Subject Products in Mexico") of the Agreement between Pilkington and Fomento de Industria y Comercio S.A., dated March 29, 1965; and (3) Pilkington shall not be obligated in such new license to grant to Nippon geographic rights greater than those sufficient to enable Nippon to manufacture and sell float glass in North America and to export such float glass to Japan;

B. Nothing contained in this order shall be: (1) deemed to immunize or exempt from the antitrust laws or any law enforced by the Commission any licensing practice engaged in by Pilkington; (2) interpreted as prohibiting Pilkington in any respect from licensing its technology in any manner and upon any terms that it chooses, other than as specifically set forth in this order; and (3) interpreted to mean that Nippon is or is not legally obligated to obtain a license from Pilkington prior to building float glass manufacturing capacity in North America.

IV.

It is further ordered, That within thirty (30) days after the date this

order becomes final, and at such other times as the Commission or its staff may require, each respondent shall submit to the Commission a verified report setting forth in detail the manner and form in which it has complied with this order.

V.

It is further ordered, That for the purposes of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request by the Commission or its staff and on reasonable notice to any respondent made to their principal offices, such respondent shall permit duly authorized representatives of the Commission:

A. Reasonable access during respondent's office hours, in the presence of counsel, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of respondent relating to any matters contained in this order, for inspection and copying; and

B. An opportunity, subject to respondent's reasonable convenience, to interview, in the presence of counsel, officers or employees of respondent regarding such matters.

VI.

It is further ordered, That each respondent shall notify the Commission at least thirty (30) days prior to any change in respondent which may affect compliance with the obligations arising out of this order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation.

CONCURRING STATEMENT OF COMMISSIONERS MARY L. AZCUENAGA
AND ANDREW J. STRENIO, JR.

Because there is reason to believe that the collateral agreement that is the subject of the consent order is anticompetitive, we have voted in favor of the order. At the same time, the settlement does not resolve other competitive concerns raised by this acquisition. We also find reason to believe that the acquisition by Nippon Sheet Glass of 20 percent of the voting securities of Libbey-Owens-Ford Co., which

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Concurring Statement

currently is owned by Pilkington plc, was likely substantially to lessen competition in the float glass market. Accordingly, a Commission challenge to the acquisition—and not just to the collateral agreement—also would have been in the public interest. The public comment provides no basis for deciding that these conclusions are incorrect.

IN THE MATTER OF
BELLINGHAM-WHATCOM COUNTY
MULTIPLE LISTING BUREAU

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3299. Complaint, Aug. 2, 1990—Decision, Aug. 2, 1990

This consent order prohibits, among other things, a Washington state multiple listing service from refusing to publish exclusive agency or conditional listings or listings containing reserve clauses; from restricting the solicitation of homeowners with current listings for future business; and from suggesting or fixing any commission split or other fees between any listing broker and any selling broker. In addition, the order requires respondent to distribute a statement describing the provisions of the order to all its members.

Appearances

For the Commission: *Randall H. Brook.*

For the respondent: *Stephen C. Watson, Seattle WA.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that respondent Bellingham-Whatcom County Multiple Listing Bureau ("BWCMLB"), a corporation, has violated and is violating Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. As used in this complaint:

(1) "*Multiple listing service*" shall mean a clearinghouse through which member real estate brokerage firms regularly exchange information on listings of real estate properties and share commissions with other members.

(2) "*Listing agreement*" shall mean any agreement between a real