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S. 598	Jun 18, 1979	S7917-18

ACTION

Remarks by Mr. Helms

SOFT DRINK INTERBRAND COMPETITION ACT

● Mr. HELMS. Mr. President, I am pleased to cosponsor S. 598, a bill to preserve a unique and competitive industry practice—the manufacture, bottling, and distribution of trademarked soft drinks by local companies operating under territorial licenses. The Soft Drink Interbrand Competition Act allows local manufacturers to maintain their territorial licenses as long as there is substantial and effective interbrand competition.

The Federal Trade Commission's decision to bar as unlawful territorial restrictions in soft drink trademark licensing—like most misguided bureaucratic actions—does more harm than good. In the long run, the FTC decision would prove to be anticompetitive. If territorial licenses are prohibited, it is most likely that many of the small bottlers will be absorbed by larger ones. Such a restructuring of the industry would be inconsistent with the purposes of the antitrust laws.

Mr. James A. Hackney, III, president of Hackney & Sons, Inc., a North Caroline-based truck body and trailer manufacturing company, has prepared an economic impact statement examining the effect on the beverage truck body and trailer industry of the FTC's decision barring territorial restrictions.

Mr. Hackney has clearly demonstrated how the FTC decision would prove to be anticompetitive—even among peripheral industries. His study provides a compelling argument for passage of S. 598. I encourage my colleagues to study this report.

Mr. President, I submit the economic impact statement prepared by Mr. James A. Hackney, III, be printed in the RECORD.

The statement follows:

ECONOMIC IMPACT STATEMENT: SOFT DRINK DELIVERY BODY AND TRAILER INDUSTRY

Assuming S. 598/H.R. 3567 is not enacted and appellate courts do not overturn FTC decision outlawing franchise territories for soft drinks in nonreturnable containers.

IMPACT ON PATTERN OF DISTRIBUTION IN THE SOFT DRINK INDUSTRY

At the present time, most packaged soft drinks are delivered by route delivery vehicles of local bottlers, driven by local employees. These driver-salesmen fill vending machines, stock supermarket shelves, and arrange special merchandising displays to increase sales. In 1977, 72.1 percent of all packaged soft drink container units (cans, bottles, etc.) were sold through food stores. Nonreturnable containers of all types accounted for 68.0 percent of food store soft drink unit sales. Expressed differently, 49.0 percent of all packaged soft drink sales were nonreturnable type containers sold in food stores.

If the exclusive territory granted the local soft drink bottler by his franchiser is eliminated, major changes are anticipated in the pattern of distribution of soft drinks to food stores and other chain outlets. Instead of buying brand-name soft drinks from each local bottler, as is the case with the present territorial limitation, a chain food store's central purchasing department would be able to negotiate directly with large regional bottlers to furnish soft drinks in nonreturnable containers, delivered in bulk to the central distribution warehouse of the food store chain. The food store chain would then deliver these soft drinks in bulk on its own vehicles, along with other canned goods, from its central warehouse to its retail stores. Food store employees would stock the shelves with soft drinks as they stock other items.

The need for conventional route delivery equipment by local bottlers (and the employees to operate it) to service outlets such as food stores would be greatly reduced once warehouse delivery is established. The type of transportation equipment used in the warehouse distribution method by food store chains is the 40-foot van trailer, produced primarily by large trailer manufacturers such as Fruehauf and Trailmobile.

It would be unrealistic to expect a local bottler to lose the entire 49 percent of his total packaged soft drink sales presently represented by food stores' purchases of nonreturnable containers. However, 30 percent sales loss is not an unrealistic estimate, meaning that local bottlers could face a substantial loss in sales to the larger bottlers who are able to sell in bulk. The resultant weakened financial condition of small bottlers would make them vulnerable take-over targets for acquistion by larger bottlers. As large bottlers become larger and small bottlers disappear, less, rather than more, competition will result.

IMPACT ON THE BEVERAGE TRUCK BODY AND TRAILER INDUSTRY

Route delivery beverage truck bodies and trailers are currently supplied by several doz-

en small manufacturers throughout the United States. Hackney & Sons, Inc., is the largest of these, but still only had total beverage body and trailer sales in 1978 of $24 million and employed a total of 600 persons in three manufacturing plants located in Washington, North Carolina; Fountain Inn, South Carolina; and Independence, Kansas. By comparison, Fruehauf Corporation had trailer operations sales in 1978 of $1.25 billion, with Trailmobile's sales at about half of Fruehauf's.

If the franchise territory system for soft drinks in nonreturnable containers is eliminated, it is anticipated that all companies in the beverage truck body and trailer industry will experience an immediate decrease in soft-drink delivery body and trailer sales of approximately 70 percent (the new level of sales will be 30 percent of previous levels), and that the severity of this decline will last for approximately five years. After that, sales might return to approximately 70 percent of previous levels. It is doubtful whether many of the present manufacturers of soft drink delivery bodies and trailers could survive five years of such declines. It is probable that some will be forced into bankruptcy; others will be forced into acquisition by a larger company. In the face of such a decline, Hackney & Sons, Inc. anticipates an immediate loss of at least 350 jobs and cannot make any prediction as to its ability to survive five years of such economic trauma. The chief beneficiary from this decline will be very large truck/trailer manufacturers, such as Fruehauf and Trailmobile, whose equipment is presently not used in the local delivery of soft drinks.

The reason for the severity of the anticipated decline in beverage body sales is not obvious without some explanation of the buying and operating habits of soft-drink fleet owners. Most soft-drink fleets operate with 90 percent of their fleet on the routes each day and 10 percent as "spares," either held in reserve for peak demand or withheld from duty for normal maintenance. Historically, bottlers have dramatically reduced buying of new delivery equipment in difficult years and simply used up spares.

Assume, as an example, a hypothetical fleet of 100 soft-drink route trucks. This is considerably larger than average, but makes arithmetic simpler for illustrative purposes. Presently, such a fleet would typically have 90 trucks on the route each day and 10 units in reserve. If this bottler's sales are reduced by 30 percent, he would then need only 70 percent of his 90 trucks on the route each day, or 63 units. An active fleet of 63 units would require approximately 7 spares, for a total fleet size of 70 units. Typically, one-tenth of the total fleet is replaced each year, so that the annual replacement requirement would then be 7 units, down from the previous 10. With 30 extra liberated units over and above normal operating and spare requirements, this bottler can simply use up his extra units for 4.3 years before being down to his new required fleet size of 70 units. Thereafter, it would be assumed that he might order 7 units each year to maintain his 70-unit-fleet.

To illustrate this situation more graphically, the present and anticipated phaseover buying pattern is shown in tabular form.

Present route delivery method (assume a fleet of 100 vehicles)

Units on daily route	90
Spares	10
Total fleet size	100

TYPICAL PROJECTED BUYING PATTERN (ASSUMING NO GROWTH)

Year	Units retired	New units needed	Total fleet size
1980	10	10	100
1981	10	10	100
1982	10	10	100
1983	10	10	100
1984	10	10	100
1985	10	10	100

Revised fleet requirements with warehouse food-store delivery accounting for 30 percent of sales (local bottler's sales are 70 percent of prior sales) (initial fleet size 100 units)

Units on daily route	63
Required spares	7
Total new required fleet size	70
Extra trucks liberated by sales decrease	30
Total fleet size	100

Year	Units retired	New units needed	Total fleet size
1980	7	0	93
1981	7	0	86
1982	7	0	79
1983	7	0	72
1984	7	5	70
1985	7	7	70

It is not anticipated that every bottler would stop ordering new route delivery equipment for more than four years. However, it is reasonably projected that at least 60 percent would do so, with the remaining 40 percent ordering at the new reduced annual level of requirements. The net impact would be a 70 percent reduction in sales to the beverage body and trailer industry. This is similar to the percent decline of orders during the period from August, 1974 through February, 1975, when bottlers were worried about sales declines resulting from sharply higher sugar prices. Fortunately, sugar prices declined, soft drink sales returned to previous levels, and strong spring and summer delivery-equipment orders kept Fiscal Year 1975 from being a disaster in the beverage body and trailer industry. Nonetheless, soft-drink route bodies and trailers delivered in 1975 were still down by 20 percent from the previous year. A softening of sales is now being felt in the beverage body and trailer industry because of anxiety over a possible unfavorable outcome in the FTC case.

SUMMARY

The present system of route delivery of soft drinks evolved over many years of trial and error as the most efficient and economical means of delivering the greatest volume of soft drinks to the consuming public. It evolved without any government interference and in full public view. The system resulted in a great number of independent local industries—the local soft drink bottlers. Many of these are now third-generation family businesses.

The system also gave birth to a great number of small peripheral industries, such as the beverage truck body and trailer industry, which specialized in serving the local bottler. Neither the soft drink industry nor the truck body and trailer industry have enjoyed special favorable tax treatment; in fact, the reverse is true. Soft drinks have been singled out for discriminatory taxes in several states, and the truck body and trailer industry is almost the last industry in America subject to the Federal Manufacturer's Excise Tax.

The Federal Trade Commission proposes, by the stroke of a pen, to totally restructure the soft drink industry. This restructuring would greatly favor the large bottlers and virtually eliminate many small bottlers. The new structure would have less competition which, in the long run, would lead to higher soft drink prices to the average consumer.

The peripheral industries which have developed to serve the soft drink industry, such as the beverage truck body and trailer industry, would be far more adversely affected by the restructuring. It is probable that most companies in this industry will be driven out of business. These companies are, for the most part, small, independent family businesses. Here again, the beneficiaries will be a few large trailer manufacturers. The level of competition in the truck body and trailer industry will be reduced, with eventual higher prices in that industry also.

The Federal Trade Commission apparently believed that its action would enhance competition in the soft drink industry. Not only do we believe the reverse will be true, but it is clear that competition will also be reduced in the peripheral industries, such as the beverage truck body and trailer industry.

A decision of this magnitude, affecting several industries, should not be made by a Federal Commission but, instead, should be made by the Congress.●