IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, c/o Department of Justice Antitrust Division Washington, D.C. 20530 Plaintiff, v. COOPER INDUSTRIES, INC., First City Tower, Suite 4000 P.O. Box 4446 Houston, Texas 77210 Defendant.	Civil Action No. 85-0765 Antitrust Filed: March 6, 1985

COMPLAINT FOR INJUNCTIVE RELIEF

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendant and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Clayton Act (15 U.S.C. § 25) to restrain the continuing violation by the defendant, as hereinafter alleged, of Section 7 of the Clayton Act (15 U.S.C. § 18).

2. Venue is proper by virtue of defendant's consent, in the Stipulation filed herein with this Complaint for Injunctive Relief, to the maintenance of this action in this District.

II

DEFINITIONS

3. As used herein:

a. The term "aviation lighting equipment" means airport identification and ground navigation lighting and control apparatus that provide visual guidance for the safe navigation of piloted air transportation, including but not limited to airport: in-pavement lights for runway and taxiway center line, touchdown zone and approach lighting, elevated edge lights for runways and taxiways, taxiway guidance signs, approach lighting systems, identification beacons, signaling devices, wind cones, obstruction lights, isolating transformers, constant current regulators, circuit selectors, and power adapters.

b. The term "HHI" means the Herfindahl-Hirschman Index, a measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

III

THE DEFENDANT

4. Cooper Industries, Inc. ("Cooper"), is made a defendant herein. Cooper is a corporation organized and existing under the laws of the State of Ohio, with its principal offices in Houston, Texas. Cooper, through its Crouse-Hinds subsidiary, is engaged in the manufacture and sale of lighting products, including aviation lighting equipment. In 1982, Cooper's aviation lighting equipment sales totalled approximately $26.1 million, including domestic and export sales.

IV

TRADE AND COMMERCE

5. Westinghouse Electric Corporation ("Westinghouse") is a Pennsylvania corporation. Prior to 1982, Westinghouse was engaged in the manufacture and sale of lighting products, including aviation lighting equipment. In 1982, Westinghouse's aviation lighting equipment sales totalled approximately $3.5 million, including domestic and export sales.

6. The Federal Aviation Administration ("FAA") funds a significant portion of purchases of aviation lighting equipment in the United States through the Airport Improvement Program (the "AIP") or through direct purchase. All aviation lighting equipment funded through the AIP or FAA purchase must be FAA approved. To obtain FAA approval, a manufacturer of aviation lighting equipment must test the equipment and demonstrate that it meets FAA specifications. In addition, FAA sometimes requires that its inspectors observe manufacturing and testing of aviation lighting equipment in the factory.

7. Aviation lighting equipment systems are usually installed by private firms which enter contracts with the airport owner. In these situations, the general contractor or an electrical subcontractor installs aviation lighting equipment at the airport. Aviation lighting equipment manufacturers sell lighting products to contractors or to distributors who in turn sell them to contractors. Occasionally, manufacturers sell airport lighting equipment directly to airports.

8. To compete fully for aviation lighting equipment sales in the United States, a manufacturer must offer a broad range of products. A manufacturer must receive the required FAA approvals, and must also become familiar with contractors and distributors to compete effectively. Also, certain tooling used in the production of aviation lighting equipment is

specialized to that use and is not useful for production of other types of equipment. It would therefore be difficult and expensive for manufacturers of other types of equipment to successfully enter into the manufacture and sale of airport lighting equipment.

9. Aviation lighting equipment differs from all other products in physical characteristics, in being FAA approved, and in its means of production, pricing, marketing, and uses. Manufacturers of aviation lighting equipment, their customers, and the end users of their products distinguish aviation lighting equipment from all other lighting products. The manufacture and sale of aviation lighting equipment constitutes a line of commerce, and a relevant product market for antitrust purposes.

10. Aviation lighting equipment is sold throughout the United States. Manufacturers of that equipment compete for sales to customers throughout the United States. Prior to October 1, 1982, both Cooper and Westinghouse sold aviation lighting equipment nationwide. The United States constitutes a relevant geographic market for the sale of aviation lighting equipment.

11. Prior to October 1, 1982, only three firms, including Cooper and Westinghouse, manufactured a line of aviation lighting equipment in the United States broad enough to provide

effective competition for contracts to improve or replace aviation lighting equipment systems at United States airports. Approximately 15 other firms sold one or more items of aviation lighting equipment in the United States.

12. In 1982, the United States' aviation lighting equipment industry had approximately $48.2 million in sales, including domestic and export sales.

13. The manufacture and sale of aviation lighting equipment is a highly concentrated industry. Prior to October 1, 1982, the four largest domestic manufacturers accounted for at least 72% of sales by domestic aviation lighting equipment manufacturers, the eight largest manufacturers accounted for approximately 87% of those sales, and the HHI was approximately 3107. After October 1, 1982, the four largest domestic manufacturers accounted for approximately 76% of sales by domestic aviation lighting equipment manufacturers, the eight largest manufacturers accounted for approximately 90% of those sales, and the HHI was approximately 3863, or 756 points higher.

14. Prior to October 1, 1982, Cooper was the largest aviation lighting equipment manufacturer in the United States with a market share of approximately 54% of sales of domestic firms.

15. Prior to October 1, 1982, Westinghouse was the second largest aviation lighting equipment manufacturer in the United States with a market share of approximately 7% of sales of domestic firms.

V

VIOLATION ALLEGED

16. On September 29, 1982, Cooper and Westinghouse entered into an agreement by which Cooper would purchase, among other things, the aviation lighting equipment business of Westinghouse. That purchase was closed on October 1, 1982, when Cooper purchased the assets used in the Westinghouse aviation lighting equipment business.

17. The effect of the transaction alleged in paragraph 16 of this complaint may be substantially to lessen competition in the aforesaid interstate trade and commerce in violation of Section 7 of the Clayton Act (15 U.S.C. § 18) in the following ways, among others:

a. actual and potential competition between Cooper and Westinghouse in the manufacture and sale of aviation lighting equipment has been eliminated;

b. concentration in the manufacture and sale of aviation lighting equipment has been substantially increased; and

c. competition generally in the manufacture and sale of aviation lighting equipment may be substantially lessened.

PRAYER

WHEREFORE, plaintiff prays:

1. That Cooper's acquisition of the aviation lighting equipment business of Westinghouse be adjudged and decreed to be a violation of Section 7 of the Clayton Act;

2. That Cooper be enjoined and restrained for a period of ten years from, in any fashion, purchasing, consolidating with, acquiring control of, or leasing assets of any other manufacturer of aviation lighting equipment with sales in the United States within two years preceding the date of the acquisition of that other manufacturer, without first receiving the consent of the plaintiff or the Court;

3. That plaintiff have such other general and further relief as the nature of this case may require and as the Court may deem just and proper;

4. That plaintiff recover the costs of this action.

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