

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,) Civil Action No. 973-737
)
 v.) Filed: September 25, 1979
)
 CROSS & TRECKER CORPORATION,)
 THE CROSS COMPANY, and)
 KEARNEY & TRECKER CORPORATION,)
)
 Defendants.)

COMPLAINT

The United States of America, 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 defendants named herein and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This Complaint is filed and this proceeding is instituted under Section 15 of the Clayton Act, as amended (15 U.S.C. § 25), in order to prevent and restrain violation by the defendants of Section 7 of that Act, as amended (15 U.S.C. § 18).

2. Cross & Trecker Corporation and The Cross Company have their principal places of business, transact business and are found within the Eastern District of Michigan, Southern Division.

3. Kearney & Trecker Corporation transacts business and is found within the Eastern District of Michigan, Southern Division.

II

DEFINITIONS

4. As used herein:
 - a. "Machining center" means a metal cutting machine tool that has interchangeable cutting tools, changes tools automatically, has a horizontal spindle, and is numerically controlled.
 - b. "Head changer" means a metal cutting machine tool that has cutting tools mounted in interchangeable heads, changes heads automatically, has horizontal spindles, and is numerically controlled.

III

DEFENDANTS

A. Cross & Trecker Corporation

5. Cross & Trecker Corporation is made a defendant herein. It is a corporation organized and existing under the laws of the State of Michigan with its principal place of business at 525 North Woodward Avenue, Bloomfield Hills, Michigan. As used herein, "Cross & Trecker" means Cross & Trecker Corporation.

6. Cross & Trecker was organized in 1978 to function as a holding company owning The Cross Company and Kearney & Trecker Corporation as subsidiaries, pursuant to the Agreement and Plan of Reorganization dated October 2, 1978 by and between The Cross Company and Kearney & Trecker Corporation.

B. The Cross Company

7. The Cross Company is made a defendant herein. It is a corporation organized and existing under the laws of the State of Michigan with its principal place of business at 17801 Fourteen Mile Road, Fraser, Michigan. As used herein, "Cross" means The Cross Company and all corporations that it controls.

8. In 1978, Cross' net sales were approximately \$138,848,000 and its net earnings were approximately \$8,893,000.

9. Cross is primarily a manufacturer and seller of metal cutting machine tools. It manufactures and sells special automated metal cutting transfer machines, assembly machines, test machines, and automated equipment for the foundry industry. Approximately 75 percent of Cross' sales in 1978 were of transfer machines, most of which were sold to manufacturers of automobiles and trucks. Cross sells its products throughout the United States.

C. Kearney & Trecker Corporation

10. Kearney & Trecker Corporation is made a defendant herein. It is a corporation organized and existing under the laws of the State of Wisconsin with its principal place of business at 11000 Theodore Trecker Way, West Allis, Wisconsin. As used herein, "K&T" means Kearney & Trecker Corporation and all corporations that it controls.

11. In 1978, K&T's net sales were approximately \$96,324,000 and its net income was approximately \$8,198,000.

12. K&T is primarily a manufacturer and seller of metal cutting machine tools. It manufactures and sells machining centers, head changers, standard milling machines, and special machines. Over half of K&T's sales in 1978 were of machining centers and head changers. K&T sells its products throughout the United States.

IV

THE MERGER

13. Pursuant to the Agreement and Plan of Reorganization dated October 2, 1978, by and between Cross and K&T, Cross and K&T became wholly-owned subsidiaries of Cross & Trecker on February 13, 1979. As used herein, "the merger" means the acquisition of Cross and K&T by Cross & Trecker.

TRADE AND COMMERCE**A. Machining Centers**

14. Machining centers are metal cutting machine tools used in applications that call for the relatively low volume production of a relatively large variety of parts.

15. Machining centers have five principal characteristics:

- a. They are numerically controlled. Instead of being operated by a human being, they are operated by a computer or other similar device;
- b. They are multi-function. They perform all of the most common metal cutting functions--drilling, milling, boring, tapping, and reaming;
- c. They have index tables. The index table is the surface to which the work piece is affixed while it is being machined. The index table "indexes," or turns (and sometimes tilts), under numerical control, so that all sides of the work piece can be machined;
- d. They have horizontal spindles. The spindles, which hold the tools that cut the work piece, are horizontal so that the tools machine the side of the work piece, and;
- e. They change tools automatically. The spindle that holds the tool while it is machining a work piece is permanently affixed to the machine. Tools not in use are stored on or near the machine. When a tool has completed its machining operation, it is automatically removed from the spindle, placed in storage, and replaced with another tool.

16. The work piece being machined remains at the machining center while a number of machining operations are performed on it. Depending on the part being produced, all machining necessary may be performed by a single machining center.

17. Because they can machine only one part at a time and use only one tool at a time, machining centers have relatively low rates of production.

18. The manufacture of machining centers is highly concentrated. The value of machining centers shipped by United States companies in 1978 was about \$134 million. The four largest firms in the market accounted for about 70 percent of those sales. K&T was the largest company in the market with sales in excess of \$46 million, accounting for approximately 35 percent of the market.

B. Head Changers

19. Head changers are metal cutting machine tools designed to be used in applications where the requirement is for the moderate volume production of similar parts by the same machine tool.

20. Head changers have five principal characteristics. The first four characteristics are the same as those of machining centers: they are numerically controlled, are multi-function, have index tables, and have horizontal spindles. The fifth characteristic is that head changers change heads automatically. The head contains a number of tools set up in a particular configuration, depending on the requirements for the part being machined. The head also contains gears so that all the tools in a particular head can be driven by the machine simultaneously. Heads not in use are stored on or near the machine. When the tools in the head have completed their machining operation, the head is automatically removed from the driver, placed in storage, and replaced with another head.

21. The work piece being machined remains at the head changer while a number of machining operations are performed on it. Depending on the part being produced, all machining necessary may be performed by a single head changer.

22. Because they can machine only one part at a time, head changers have a lower rate of production than do some other machine tools. Because each head contains a number of tools in a predetermined configuration, head changers normally have a higher rate of production than do machining centers.

23. The manufacture of head changers is highly concentrated. Only about eight companies have sold or bid for the sale of head changers since 1976. K&T was the second largest of these companies in terms of sales of head changers.

C. The Multi-Center

24. In or about 1975, Cross began to direct some of its efforts toward the development of a machining center and a head changer.

25. In or about May, 1976, Cross purchased engineering and other technical and business information (including computer programs, blueprints and other drawings, and instruction and service manuals) related to the manufacture of various models of the Burr Transfercenter from Deutche Industrie analagen GmbH, a German company. The purchase was negotiated personally by Ralph E. Cross, Sr., President, Chief Executive Officer, and Chairman of the Board of Directors of Cross. Some models of the Burr Transfercenter were machining centers; other models were machining centers that also had automatic head changers.

26. Thereafter, Cross worked on the development of a machine tool it called the Multi-Center, using as a basis the Burr designs. Ralph E. Cross, Sr., was responsible for the development of the Multi-Center, a machining center with both an automatic tool changer and an automatic head changer.

27. Cross' objective in developing the Multi-Center was to design a machine that would do both multiple and single spindle machining operations and thus eliminate the need for two separate machines and a transfer device to move the work pieces from the single spindle machine to the multiple spindle machine.

28. Cross' Manuals of Orders established the company's product lines and, for at least the years 1976, 1977, and 1978, included the following description of its Product Line No. 5:

Multi-Function N/C machines--drill, mill
and bore, automatic tool change, horizontal--
includes single and multiple spindle machining
centers.

29. While the Multi-Center was being developed, Cross advertised the Multi-Center as one of its products and made other public statements to the effect that it had the Multi-Center available for sale.

30. In 1977, Cross submitted a quote to a customer for the sale of a Multi-Center. The machine whose price was quoted had only an automatic tool changer, but the quote specified that an automatic head changer would be added at a later date. K&T also submitted a quote for the sale of a machining center to the same customer in competition with Cross. The customer bought K&T's machining center.

31. Cross' development of the Multi-Center was approximately 80 percent complete at the time the agreement in principle to merge was reached with K&T. At that time, development of the Multi-Center with an automatic head changer could have been completed within approximately one more year and with an expenditure of approximately an additional \$100,000. Also at that time, a Multi-Center without an automatic head changer but with an automatic tool changer could have been marketed within a very short period at nominal additional cost.

32. Cross stopped active development work on the Multi-Center and stopped trying to sell it to potential customers because of the merger with K&T.

VI

VIOLATION ALLEGED

33. The effect of the merger may be substantially to lessen competition or to tend to create a monopoly in violation of Section 7 of the Clayton Act in the following ways, among others:

- a. Potential competition between Cross and K&T in the manufacture and sale of machining centers has been eliminated;
- b. Potential competition between Cross and K&T in the manufacture and sale of head changers has been eliminated;
- c. Cross has been eliminated as a potential competitor in the manufacture and sale of machining centers;

- d. Cross has been eliminated as a potential competitor in the manufacture and sale of head changers;
- e. The potential for increased competition in the manufacture and sale of machining centers may be substantially lessened; and
- f. The potential for increased competition in the manufacture and sale of head changers may be substantially lessened.

PRAYER

WHEREFORE, plaintiff prays:

1. That, pending final adjudication on the merits, the defendants be ordered to hold Cross and K&T separate and to operate them as separate businesses.
2. That the merger of Cross and K&T be adjudged to be in violation of Section 7 of the Clayton Act.
3. That Cross & Trecker be ordered to divest all of its interest in either Cross or K&T or both.
4. That Cross be permanently enjoined from acquiring any interest in or merging in any way with K&T.
5. That K&T be permanently enjoined from acquiring any interest in or merging in any way with Cross.

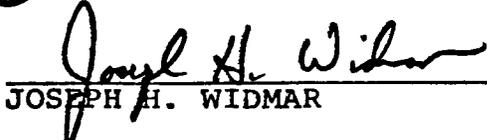
6. That plaintiff have such other and additional relief as may be just and proper.

7. That plaintiff receive its taxable costs.



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