

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA  
THIRD DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Civil Action No. 4-80-467
v.	)	
	)	
GOULD, INC. AND	)	Filed: September 10, 1980
SAFT AMERICA, INC.	)	
	)	
Defendants.	)	

COMPLAINT

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 defendants 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, as amended, 15 U.S.C. §25, in order to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

2. Gould, Inc. transacts business and is found within the District of Minnesota.

3. SAFT America, Inc. transacts business within the District of Minnesota.

II.

DEFENDANTS

4. Gould, Inc. ("Gould") is made a defendant herein. Gould is a corporation organized and existing under the laws of the State of Delaware, and maintains its principal place of business in Rolling Meadows, Illinois. Gould is engaged in the manufacture and sale of electronics, electrical equipment,

batteries and industrial equipment. In 1979 Gould had total assets of \$1.6 billion, sales of \$2.0 billion and net income of \$105.9 million. Gould's battery business had sales of \$467.0 million, total assets of \$274.8 million and pretax income of \$54.9 million in 1979. The Portable Battery Division of Gould is located in St. Paul, Minnesota. The Portable Battery Division produces sealed nickel-cadmium batteries, sealed lead-acid batteries, and silver-zinc batteries at a plant in St. Paul, Minnesota and produces zinc-air batteries at a plant in Eagan, Minnesota. The Portable Battery Division also operates a battery assembly plant at San Ysidro, California. Total net sales by the Portable Battery Division in 1979 were \$26.8 million.

5. SAFT America, Inc. ("SAFT America") is made a defendant herein. SAFT America is a corporation organized and existing under the laws of the State of Delaware, and maintains its principal place of business in Valdosta, Georgia. SAFT America is a subsidiary of Societe des Accumulateurs Fixes et de Traction ("SAFT-France"), located in Paris, France. SAFT-France is a subsidiary of Compagnie Generale d'Electricite ("CGE") also located in Paris, France. CGE controls 179 business entities located in 23 countries. These businesses are engaged in the manufacture and sale of electrical and electronic equipment, construction materials, telecommunication devices and computers. In 1979 CGE had consolidated sales of \$5.7 billion. Total sales by SAFT-France were \$198 million in 1979. SAFT-France produces several types of batteries, including nickel-cadmium batteries. SAFT America and its affiliate, SAFT Corporation of America, operate facilities in Valdosta, Georgia that manufacture sealed nickel-cadmium batteries, vented nickel-cadmium batteries and zinc-air batteries. SAFT America also imports and sells in the United

states sealed and vented nickel-cadmium batteries, zinc-air batteries and lithium-silver chromate batteries. SAFT America had total sales of \$14.4 million in 1979.

### III.

#### TRADE AND COMMERCE

6. Batteries are electrochemical devices that store chemical energy. This energy is converted into electric current as the battery is discharged. Batteries are generally classified as primary or secondary. Primary batteries may be discharged only once. Secondary batteries may be recharged and used repeatedly.

7. Nickel-cadmium batteries are secondary batteries. Vented nickel-cadmium batteries, which are open to the atmosphere through a vent mechanism which permits the escape of gases, are used primarily for starting jet aircraft. Sealed nickel-cadmium batteries are manufactured in a variety of sizes and configurations, and are used in several applications, such as portable power tools and consumer products, instruments and meters, memory preservation for semi-conductors, in toys and in military and aerospace applications.

8. Sealed nickel cadmium batteries, in addition to their capacity as secondary batteries for recharging and reuse, have several unique characteristics. These include a long operating life, in which more than 1,000 charge/discharge cycles are possible, and the ability to tolerate extended overcharge currents, to be charged at varying rates, to be completely discharged and then recharged, and to deliver energy at very rapid rates. Also, sealed nickel-cadmium batteries have excellent performance characteristics at very low temperatures, can be stored for years, are resistant to shock and vibration, and can provide nearly-constant voltage throughout the discharge period.

9. In 1979, total sales of sealed nickel cadmium batteries in the United States were approximately \$97 million. Gould's sales of sealed nickel-cadmium batteries were \$17.3 million, second largest in the nation. SAFT America's sales of sealed nickel-cadmium batteries in 1979 were \$3.2 million, fifth largest in the nation.

10. The sealed nickel cadmium battery market is highly concentrated. The four largest firms in this market account for 89.5% of total sales.

11. Gould and SAFT America are competitors in the manufacture and sale of sealed nickel-cadmium batteries. In 1979 Gould's sales of these batteries accounted for 17.7% of total sales in the United States, and SAFT's sales of these batteries accounted for 3.3%. The combined share of these two firms is 21.0%.

12. The acquisition of Gould's Portable Battery Division by SAFT America would increase the combined market share of the four largest sellers of sealed nickel-cadmium batteries to 92.8% of total sales.

13. Sealed lead acid batteries are another type of secondary battery. Most sealed lead-acid batteries are larger than sealed nickel-cadmium batteries and, unlike nickel-cadmium batteries, their construction is similar to batteries found in most automobiles. The characteristics of sealed lead-acid batteries differ from sealed nickel-cadmium batteries in several respects.

14. One type of sealed lead-acid battery, developed by the Gates Rubber Company and known as the Gates cell, resembles a nickel-cadmium battery more closely than do other lead-acid batteries. As with other lead-acid batteries, however, many of its performance characteristics differ from nickel-cadmium batteries. Gould manufactures sealed lead-acid batteries, but

does not manufacture the Gates cell. SAFT does not manufacture or sell any type of sealed lead-acid batteries, though CGF affiliates manufacture such batteries in France, including a cell resembling the Gates cell.

15. Total sales of Gates cell batteries in the United States in 1979 were \$12.2 million. In a market consisting of sealed nickel-cadmium batteries and Gates cell batteries, Gould is the second largest competitor, controlling 15.8% of total sales in that market, and SAFT America is sixth largest, controlling 2.9%. Thus, the combined market share of these firms is in excess of 18.7%.

16. The combined U.S. market for sales of sealed nickel-cadmium and Gates cell batteries is highly concentrated. The four largest firms in this market account for 87.0% of total sales.

17. The acquisition of Gould's Portable Battery Division by SAFT America would increase the combined market share of the four largest sellers of sealed nickel-cadmium batteries and Gates cell batteries to 89.9% of total sales.

18. Gould and SAFT America are engaged in interstate commerce. Each sells a variety of products, including sealed nickel-cadmium batteries, that are regularly shipped in interstate commerce from the production sites to customers located in other states.

#### IV.

##### VIOLATION ALLEGED

19. On or about September 12, 1980, SAFT America will purchase Gould's Portable Battery Division, with the exception of the zinc-air facility in Eagan, Minnesota, for approximately \$22 million.

20. The effect of this acquisition by SAFT America may be substantially to lessen competition or to tend to create a

monopoly in the aforesaid trade and commerce in violation of Section 7 of the Clayton Act in the following ways, among others:

(a) Actual competition and the potential for increased competition between Gould and SAFT America in the manufacture and sale of sealed nickel-cadmium batteries and of sealed nickel cadmium batteries and Gates cell batteries will be eliminated;

(b) Actual competition and the potential for increased competition in the sealed nickel-cadmium and the sealed nickel-cadmium and Gates cell battery markets generally may be substantially lessened; and

(c) Concentration in the manufacture and sale of sealed nickel-cadmium batteries and of sealed nickel cadmium batteries and Gates cell batteries may be substantially increased.

PRAYER

WHEREFORE, plaintiff prays:

1. That pending final adjudication of the merits of this complaint, a temporary restraining order and preliminary injunction be issued preventing and restraining the defendants Gould and SAFT America, and all persons acting on their behalf, from taking any action, directly or indirectly, in furtherance of the acquisition of the Portable Battery Division of Gould by SAFT America.


2. That the acquisition of Gould's Portable Battery Division by SAFT America be adjudged to be in violation of Section 7 of the Clayton Act.

3. That Gould and SAFT America be permanently enjoined from carrying out the acquisition of Gould's Portable Battery Division by SAFT America or any similar plan or agreement the

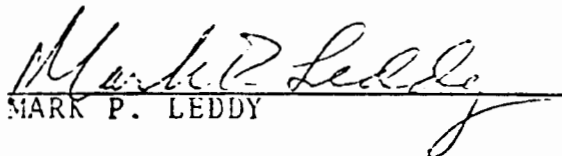
effect of which would be to combine the businesses of United and  
SAFT.

4. That the plaintiff have such other and further relief  
as the Court may deem just and proper; and

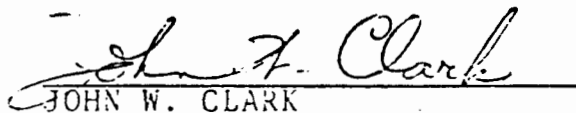
5. That the plaintiff recover the costs of this action.

  
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