

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

-----:
UNITED STATES OF AMERICA, :

plaintiff, :

v. :

COMBUSTION ENGINEERING, INC.; :
GUARDIAN INDUSTRIES CORP. :

Defendants. :
-----:

Civil Action No. B-78-189

Antitrust-Equitable
Relief Requested

Filed: May 10, 1978

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 defendants named herein and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this proceeding is instituted against the defendants named herein under Section 15 of the Act of Congress of October 15, 1914, as amended (15 U.S.C. § 25), commonly known as the Clayton Act, in order to prevent and restrain violation by the defendants of Section 7 of that Act, as amended (15 U.S.C. § 18).

2. Defendant Combustion Engineering, Inc. has its principal place of business, transacts business and is found within the District of Connecticut.

II

DEFENDANTS

3. Combustion Engineering, Inc. (hereinafter "C-E") is named a defendant herein. C-E is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Stamford, Connecticut. In 1977, it had total net sales of about \$2.0 billion.

4. Guardian Industries Corp. (hereinafter "Guardian") is named a defendant herein. Guardian is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Northville, Michigan. In 1977, it had total net sales of \$155.6 million.

5. C-E and Guardian are engaged in the manufacture and sale of flat glass and the fabrication of flat glass products for the automotive and construction markets.

III

TRADE AND COMMERCE

6. Flat glass is manufactured by melting a mixture composed primarily of sand, soda ash and limestone at 2900 degrees Fahrenheit and forming the resulting raw glass into a flat form through one of three processes: the plate process, the sheet process, or the float process. Plate glass is formed by casting molten raw glass between two water-cooled rolls, and then grinding and polishing the resulting flat glass to remove irregularities in the surfaces. Sheet glass is formed by drawing a ribbon vertically off the molten mass of raw glass. Float glass is formed by pouring molten raw glass onto a bath of molten tin. The glass disperses evenly over the tin, forming a flat sheet with parallel sides.

Plate glass, which is very expensive to produce, is no longer made in the United States. Sheet glass, which has a high degree of distortion because of its uneven surfaces, and so is used generally only for very small windows, accounts for about 8 percent of all flat glass manufactured in the United States. The balance of flat glass manufactured in this country is manufactured by the float process.

7. Virtually all flat glass is used by the automotive and construction industries. Approximately 40 to 45 percent of the flat glass produced is used for applications such as windows and curtain walls in buildings. The balance is further processed in some way for other applications. Some is formed into insulated glass, by putting together two pieces of flat glass with air between them. Some is tempered, to give it extra strength and make it suitable for storefronts, patio doors and the rear and side windows of automobiles. Some is laminated, for use in automobile windshields and architectural applications which require glass which is both thin and very strong. Still other flat glass is coated, for applications such as reflective curtain walls or mirrors.

8. C-E's glass division operates a float line for the manufacture of flat glass at its plant in Cinnaminson, New Jersey, with production capacity of 460 tons drawn per day. It also has glass fabrication facilities in St. Louis, Missouri and Fullerton, California. Sales of its glass division in 1977 were \$63 million.

9. Guardian operates two float lines for the manufacture of flat glass at its plant in Carleton, Michigan, with production capacity

of 925 tons drawn per day. In addition, Guardian has constructed and plans to begin operating in the third quarter of 1978 a third float line facility at its new plant in Kingsburg, California. This new float line has production capacity of 550 tons drawn per day, and will increase Guardian's flat glass making capacity by more than 50 percent. Guardian's sales of flat glass and fabricated glass in 1977 were \$129.0 million.

10. The manufacture of flat glass in the United States is highly concentrated. Only eight firms manufacture flat glass in this country and in 1977 the four largest firms controlled 86.7 percent of total domestic production capacity. With the addition of Guardian's new Kingsburg plant later this year, the four largest firms will control approximately 90 percent of total domestic production capacity. Guardian is the fourth largest manufacturer of flat glass in the United States, with approximately 6.5 percent of total domestic production capacity in 1977, and approximately 9.9 percent later this year. C-E ranked sixth or seventh among domestic manufacturers of flat glass in 1977, with approximately 3.2 percent of production capacity.

11. The manufacture of flat glass in the United States East of the Rockies (EOR) is highly concentrated. In 1977 the four largest domestic manufacturers of flat glass controlled 85.8 of total EOR production capacity. Guardian is the fourth largest manufacturer of flat glass EOR, with approximately 7.0 percent of total EOR production capacity in 1977. C-E ranked sixth or seventh among EOR manufacturers of flat glass in 1977, with approximately 3.4 percent of EOR production capacity.

12. C-E operates flat glass making facilities in New Jersey and regularly sells and ships flat glass throughout the United States and EOR. Guardian operates flat glass making facilities in Michigan and intends to soon operate a flat glass making facility in California, and regularly sells and ships, and will sell and ship, flat glass throughout the United States and EOR. C-E and Guardian have been and are engaged in interstate commerce.

IV

VIOLATION ALLEGED

13. On or about April 25, 1978, Guardian announced that it had reached an agreement in principle to acquire the glass division of C-E for \$50 million in cash. The acquisition may be consummated on or before May 15, 1978.

14. The effect of the aforesaid acquisition of C-E's glass division by Guardian may be substantially to lessen competition or tend to create a monopoly in the aforesaid interstate trade and commerce in violation of Section 7 of the Clayton Act in the following ways, among others:

- (a) actual and potential competition between C-E and Guardian in the manufacture and sale of flat glass in the United States will be eliminated;
- (b) actual and potential competition between C-E and Guardian in the manufacture and sale of flat glass EOR will be eliminated;
- (c) concentration in the manufacture of flat glass in the United States will be increased;
- (d) concentration in the manufacture of flat glass

EOR will be increased; and

- (e) competition generally in the manufacture and sale of flat glass may be substantially lessened.

PRAYER

WHEREFORE, plaintiff prays:

1. That pursuant to Section 15 of the Clayton Act the Court order summons to be issued to Guardian commanding it to appear and answer the allegations contained in this complaint and to abide by and perform such orders and decrees as this Court may make in the premises.
2. That pending final adjudication of the merits of this complaint a temporary restraining order and a preliminary injunction be issued against the defendants and all persons acting in their behalf preventing and restraining them from carrying out the agreement referred to in paragraph 13 herein, or any similar plan or agreement the effect of which would be to consolidate or combine the businesses of Guardian and the glass division of C-E.
3. That the aforementioned acquisition by Guardian of the glass division of C-E be adjudged a violation of Section 7 of the Clayton Act.
4. That Guardian and C-E be perpetually enjoined from carrying out the agreement referred to in paragraph 13 herein or any similar plan or agreement the effect of which would be to consolidate or combine the businesses of Guardian and C-E.
5. That Guardian be enjoined, under such circumstances as the Court may direct, for a period of years from acquiring the stock or assets of, or merging with, any concern engaged in the

manufacture of flat glass.

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

7. That plaintiff recover the costs of this suit.

HUGH P. MORRISON, JR.
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United States Attorney

CITY OF WASHINGTON)
) ss.
DISTRICT OF COLUMBIA)

Robert W. Wilder, being duly sworn, deposes and says:

1. I am an attorney employed by the United States Department of Justice;

2. I have been actively engaged in the preparation of this proceeding;

3. I have read the foregoing Complaint and know the contents and am familiar with the subject matter thereof;

4. I am informed and believe that the allegations of fact contained therein are true;

5. The sources of my information are statements made and data submitted orally to the Department of Justice by defendants Combustion Engineering, Inc. and Guardian Industries Corp. and information obtained from trade and industry sources and from publications.

ROBERT W. WILDER

Subscribed and sworn to before
me this day of May, 1978.

Notary Public