

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

AIRCO, INC.,

Defendant.

Civil Action No. 72 CIV 265

Filed: January 20, 1972

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 defendant, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted against the defendant under Section 4 of the Act of Congress of July 2, 1890 (15 U.S.C. §4) as amended, commonly known as the Sherman Act, in order to prevent and restrain the continuing violations by the defendant, as hereinafter alleged, of Sections 1 and 2 of said Act (15 U.S.C. §§ 1 and 2).

2. The defendant Airco, Inc., formerly known as Air Reduction Company, Inc., maintains an office, transacts business, and is found within the Southern District of New York.

II

THE DEFENDANT

3. Airco, Inc., (hereinafter referred to as "Airco"), is made a defendant herein. The defendant

is a corporation organized and existing under the laws of the State of New York, with its principal place of business in New York, New York.

### III

#### TRADE AND COMMERCE

4. Airco is a diversified industrial corporation whose current product lines are divided into two major product categories -- the Metallurgical group, and the Gases and Related Equipment group. Prior to January 1971, when it sold its Chemicals and Plastics Division to Air Products & Chemicals, Inc., Airco was also engaged in the manufacture and sale of a variety of chemical and plastic products. In 1969, Airco ranked as the 221st largest industrial corporation in the United States with total sales of approximately \$487 million. In that year, Airco's metallurgical products, including ferroalloys, carbon, graphite, electrodes, and various types of metals, accounted for about 46.6 percent of its total sales; Airco's gases and related equipment products, including industrial gases, cryogenic equipment, welding and cutting equipment, and medical gases, accounted for about 45.7 percent of its total sales; and Airco's chemical and plastic products accounted for about 7.7 percent of its total sales.

5. Airco maintains production facilities in 23 states and, through subsidiaries, in Canada and various other foreign countries. Airco operates its own sales offices, laboratories, and warehouses throughout the United States. In addition, Airco markets its products

domestically through over 2,000 independent distributors and dealers.

6. Airco purchases substantial quantities of raw materials, equipment, supplies, commodities, and services from other companies for use in its operations. Many of these same companies also make substantial purchases of the types of products manufactured by Airco.

7. Airco's purchases of raw materials, equipment, supplies, commodities and services from other companies or suppliers are made in a continuous flow of interstate commerce. Conversely, shipments of ferroalloys, industrial gases and other products by Airco to these suppliers and to distributors, jobbers, dealers, and warehouses, are made in a continuous flow of interstate commerce.

#### IV

##### OFFENSES ALLEGED

8. Since at least as early as 1959, and continuing to the date of this complaint, the defendant has violated Section 1 of the Sherman Act (15 U.S.C. § 1) by entering into combinations involving reciprocal purchasing arrangements with respect to a substantial amount of interstate commerce whereby the defendant purchased products and services sold by various suppliers upon the understanding that those suppliers would purchase the products and services of the defendant, in unreasonable restraint of the aforesaid trade and commerce.

9. Since at least as early as 1959, and continuing to the date of this complaint, the defendant, through the use of its purchasing power, has violated Section 2

of the Sherman Act (15 U.S.C. § 2) by attempting to monopolize that part of the aforementioned interstate trade and commerce consisting of the requirements of actual and potential suppliers of the defendant for ferroalloys, industrial gases and other products sold by the defendant.

10. Pursuant to the aforesaid combinations and attempt to monopolize, the defendant has done, among other things, the following:

- (a) Adopted a policy of reciprocal purchasing or of purchasing from suppliers who would purchase from Airco;
- (b) Designated a trade relations manager and other personnel with specific responsibility of coordinating trade relations within the corporation to facilitate and promote the practice of reciprocal dealings;
- (c) Maintained comparative purchase and sales records to measure the balance of purchases from, and sales to suppliers;
- (d) Made Airco's purchasing data available to persons with sales responsibilities and Airco's sales data available to persons with purchasing responsibilities;
- (e) Took measures to insure that actual and potential suppliers were aware of Airco's practice of reciprocal purchasing;

- (f) Discussed with actual and potential suppliers their sales and purchase positions relative to Airco;
- (g) Caused suppliers to purchase, or to maintain or to increase their purchases, from Airco in reciprocation for Airco's purchases from those suppliers;
- (h) Purchased goods and services from particular suppliers upon the understanding that these suppliers would purchase the goods and services of Airco; and
- (i) Belonged to and took an active part in the Trade Relations Association, Inc. for the purpose of promoting Airco's trade relations program.

V

EFFECTS

11. The aforesaid violations by the defendant have had the following effects, among others:

- (a) Competitors of Airco in the sale of various goods and services have been foreclosed from selling substantial quantities thereof to firms that are actual and potential suppliers of Airco; and
- (b) Suppliers of various goods and services required by Airco have been foreclosed from selling substantial quantities of such goods and services to Airco.

PRAYER

WHEREFORE, plaintiff prays:

1. That the aforesaid combinations between the defendant and its suppliers involving reciprocal purchasing arrangements be adjudged and decreed to be in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

2. That the aforesaid attempt to monopolize be adjudged and decreed to be in violation of Section 2 of the Sherman Act (15 U.S.C. § 2).

3. That the defendant and its officers, directors, agents, and all other persons acting on behalf of the defendant, be perpetually enjoined from:

- (a) Entering into or adhering to any contract, agreement or understanding with any supplier involving reciprocal purchasing arrangements;
- (b) Communicating to suppliers that it will place its purchases with or give preference to suppliers who purchase from the defendant;
- (c) Engaging in the practice of compiling statistics which compare the defendant's purchases of goods or services from companies with sales by the defendant to such companies;
- (d) Discussing with suppliers comparative purchase and sales data of such companies relative to the defendant;


- (e) Compiling lists of approved suppliers based entirely or in part on suppliers' purchases from the defendant;
- (f) Transmitting to personnel with sales responsibilities information concerning purchases by the defendant from particular suppliers, transmitting to personnel with purchasing responsibilities information concerning sales by the defendant to particular companies, or otherwise implementing any program involving reciprocity;
- (g) Utilizing purchases by the defendant or one of its subsidiaries, affiliated companies or divisions from particular suppliers to promote sales to such suppliers by the defendant or one of its subsidiaries, affiliate companies or divisions.

4. That this Court order the defendant to abolish any duties that are assigned to any of its officials or employees which relate to the conduct or effectuation of a reciprocity or trade relations program.


5. That this Court order the defendant to advise all of its suppliers, by written notice, that the defendant no longer engages in reciprocal purchasing and to furnish a copy of the Final Order of this Court to such suppliers.

6. That plaintiff have such other relief as the nature of the case may require and the Court may deem just and proper.

7. That plaintiff recover the costs of this action.

  
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