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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE CLEVELAND TRUST COMPANY,

Defendant.

Civil No. C-70.301

Filed: March 26, 1970

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 under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, as amended (15 U.S.C. § 25), commonly known as the Clayton Act, in order to prevent and restrain violations by the defendant of Sections 7 and 8 of the Clayton Act.

2. The Cleveland Trust Company maintains its principal offices, transacts business, and is found within the Eastern Division of the Northern District of Ohio.

DEFENDANT

3. The Cleveland Trust Company, hereinafter referred to as "Cleveland Trust," is made the defendant herein.

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Cleveland Trust is a corporation organized and existing under the laws of the State of Ohio, with its principal offices in Cleveland, Ohio.

III

TRADE AND COMMERCE

4. Cleveland Trust, with over \$3 billion in trust assets, is the 16th largest bank in the United States in terms of total trust assets. In the Cleveland Standard Metropolitan Statistical Area (hereinafter referred to as "SMSA") Cleveland Trust accounts for about 60 per cent of total trust assets held by commercial banks, and three banks account for about 96 per cent of such assets.

5. George F. Karch (hereinafter referred to as "Karch") is Chairman of the Board and President of Cleveland Trust. Allan K. Shaw (hereinafter referred to as "Shaw") is Senior Vice President of Cleveland Trust.

6. Automatic screw machines are complex machine tools which perform a variety of integrated processes, such as cutting, polishing, boring, and reaming of ferrous and non-ferrous bars, tubes, castings, and forgings. Total annual sales of automatic screw machines in the United States are about \$166 million. Within this market there are two submarkets: (a) single spindle automatic screw machines, which can tool only one metal piece at a time; and (b) multiple spindle automatic screw machines, which have the capability of tooling more than one piece of metal at a time. Annual sales of single spindle machines in the United States are about \$94 million; those of multiple spindle machines are about \$71 million. Although the two types of

machines differ generally as to size and complexity, the technology required to build either type of machine can be, and frequently is, applied to building the other. Therefore, although manufacturers tend to specialize in either one or the other, most of the large producers manufacture some of both. Automatic screw machines are sold and shipped throughout the United States.

7. National Acme Company, with total automatic screw machine sales of \$20,568,000 in 1967, accounted for approximately 12.4 per cent, or the third largest share, of such sales in the United States. In 1967, National Acme Company's sales of multiple spindle automatic screw machines were \$20,470,000, accounting for approximately 28.5 per cent, or the largest share of such sales in the United States. In September 1968, National Acme Company and Cleveland Twist Drill Company merged to form Acme-Cleveland Corporation (hereinafter referred to as "Acme"). Acme continues the business previously conducted by National Acme Company, including the manufacture and sale of automatic screw machinery. As of December 31, 1968, Acme had assets of about \$109 million.

8. Proxy statements and letters to stockholders issued in connection with the merger of National Acme and Cleveland Twist Drill announced that Karch, an agent of Cleveland Trust, would become a Director of Acme.

9. Pneumo-Dynamics Corporation (hereinafter referred to as "Pneumo"), with multiple spindle automatic screw machine sales of about \$17,093,000 in 1967, accounted for about 10.3 per cent, or the fourth largest share, of total automatic screw machine sales in the United States, and for about 23.7 per cent, or the second largest share, of multiple spindle screw

machine sales² in the United States. As of December 31, 1968, Pneumo had assets of about \$108 million.

10. Shaw, an agent of Cleveland Trust, is a Director of Pneumo.

11. Warner & Swasey Company (hereinafter referred to as "W&S"), with automatic screw machine sales in 1967 of \$36,977,000, accounted for about 22.3 per cent, or the largest share, of such sales in the United States. In 1967, W&S sales of multiple spindle automatic screw machines were \$3,157,000 or about 4.4 per cent of such sales in the United States, and its sales of single spindle automatic screw machines were \$33,820,000, or about 35.9 per cent of such sales in the United States. As of December 31, 1968, W&S had assets of about \$131 million.

12. Karch, an agent of Cleveland Trust, is a Director of W&S.

13. White Consolidated Industries, Inc. (hereinafter referred to as "White"), with automatic screw machine sales in 1967 of \$9,250,000, accounted for about 5.6 per cent, or the seventh largest share, of such sales. In 1967, White's sales of multiple spindle automatic screw machines were \$6,216,000, or about 8.7 per cent of such sales, and its sales of single spindle automatic screw machines were \$3,034,000, or about 3.2 per cent, of such sales in the United States. As of December 31, 1968, White had total assets of about \$600 million.

14. Shaw, an agent of Cleveland Trust, is a Director of White.

OFFENSES CHARGED

First Offense

15. Cleveland Trust, through its trust department, has acquired, in a fiduciary capacity, substantial parts of the stock of Acme, Pneumo, W&S, and White.

Cleveland Trust acquired 27 per cent of the stock of Acme at the time of Acme's formation in September 1968. As of September 1968, Cleveland Trust had full power to vote at least 20 per cent of the outstanding common stock of Acme and had qualified power to vote about 5 per cent of such stock. As of November 27, 1968, Cleveland Trust had about 14 per cent of the outstanding common stock of Pneumo. As of that date, Cleveland Trust had full power to vote all these shares. As of May 15, 1968, Cleveland Trust had acquired about 11 per cent of outstanding stock in W&S. As of that date, Cleveland Trust had full power to vote about 2 per cent of the outstanding common stock of W&S, and had qualified power to vote about 3 per cent of such stock. Cleveland Trust holds less than 5 per cent of the common stock of White.

16. Cleveland Trust does not hold the aforesaid stock solely for investment. Cleveland Trust consistently exercises the voting rights to these shares of stock to elect directors, and to influence important management and policy decisions. Cleveland Trust does substantial banking business with Acme, Pneumo, W&S, and White.

17. The effect of the aforesaid stock acquisitions may be to substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, in the following ways, among others:

- (a) actual and potential competition among Acme, Pneumo, W&S, and White in the manufacture and sale of automatic screw machinery may be substantially lessened;
- (b) actual and potential competition among Acme, Pneumo, W&S, and White in the manufacture and sale of single spindle automatic screw machinery may be substantially lessened; and
- (c) actual and potential competition among Acme, Pneumo, W&S, and White in the manufacture and sale of multiple spindle automatic screw machinery may be substantially lessened.

Second Offense

18. Cleveland Trust, acting through its agents Karch and Shaw, has been and is now a Director of Pneumo, W&S, and White in violation of Section 8 of the Clayton Act.

PRAYER

WHEREFORE, plaintiff prays:

1. That the acquisition, retention, and use by Cleveland Trust of the stock of Acme, Pneumo, W&S, and White be adjudged and decreed to be in violation of Section 7 of the Clayton Act.

2. That Cleveland Trust be required to divest itself of its stock in all but one of the aforesaid companies.

3. That Cleveland Trust be ordered to withdraw from participation in the direction, control, or management of all but one of the aforesaid companies.

4. That it be adjudged that Cleveland Trust has violated Section 8 of the Clayton Act.

5. That Cleveland Trust be ordered and directed to order its agents to resign from directorships in all but one of the aforesaid companies.


6. That Cleveland Trust, its officers, directors, agents, and all other persons acting on its behalf be enjoined from permitting any of its agents from serving as a Director of two or more competing corporations which are each engaged in interstate commerce and have capital, surplus, and undivided profits aggregating more than \$1,000,000.

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

8. That plaintiff recover the costs of this suit.


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