

Filed  
Oct. 4, 1922

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 ) Civil No. C 70-301  
 v. )  
 ) Judge Battisti  
 THE CLEVELAND TRUST COMPANY, )  
 ) Filed:  
 Defendant. )

AMENDED 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 amended 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.

## II

### DEFENDANT

3. The Cleveland Trust Company, hereinafter referred to as "Cleveland Trust," is made the defendant herein. 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, Cleveland Trust accounts for about 60 percent of the total trust assets held by commercial banks, and three banks account for about 96 percent of such assets.

5. As of the date of the filing of the original complaint, George F. Karch (hereinafter referred to as "Karch") was Chairman of the Board of Cleveland Trust. Allan K. Shaw (hereinafter referred to as "Shaw") was Executive Vice President of Cleveland Trust.

6. (a) Multiple spindle and single spindle automatic bar and chucking 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. These machines are within a broad market that includes some or all of the following types of horizontal and vertical metal cutting equipment: automatic tool rotating machines, numerically controlled lathes, center turning stations, turret lathes, tracer lathes, transfer lines

and engine lathes, as well as certain types of forming equipment such as cold heading machines; in some situations the foregoing are interchangeable in use for and have replaced or have been replaced by automatic bar and chucking machines.

(b) Within the market referred to in paragraph 6(a) above are multiple spindle automatic bar and chucking machines, which have the capability of tooling more than one piece of metal at a time. Sales of new machines (including tooling, attachments, accessories and parts sold with originally produced machines) produced in the United States (hereinafter referred to as "MSA machines") were approximately \$63 million in 1969. Although MSA machines encounter some competition from single spindle automatic bar and chucking machines, the other types of equipment referred to in paragraph 6(a) above and used, rebuilt and foreign built multiple spindle automatic bar and chucking machines, nonetheless sales of MSA machines constitute an identifiable submarket within the meaning of the term "line of commerce" as used in Section 7 of the Clayton Act. MSA machines are sold and shipped throughout the United States.

(c) Single spindle automatic bar and chucking machines (hereinafter referred to as "SSA machines") can tool only one metal piece at a time. SSA machines are sold and shipped in interstate commerce.

(d) Vertical boring mills are machine tools which principally perform the single operation of boring large metal pieces. Vertical boring mills are sold and shipped in interstate commerce.

7. Acme Cleveland Corporation ("Acme"), with sales of MSA machines of approximately \$21,943,000 in 1969, accounted for approximately 34.8 percent, or the largest share, of total sales of MSA machines. Acme was formed in 1968 as a

result of a combination of National Acme Company and The Cleveland Twist Drill Company. Acme continues the business previously conducted by National Acme Company, including the manufacture and sale of MSA machines. As of December 31, 1969, Acme had capital, surplus, and undivided profits aggregating more than \$1 million.

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

9. (a) Pneumo-Dynamics Corporation (hereinafter referred to as "Pneumo"), with sales of MSA machines of about \$9,014,000 in 1969, accounted for about 14.3 percent, or the fourth largest share, of total sales of MSA machines. As of December 31, 1969, Pneumo had capital, surplus, and undivided profits aggregating more than \$1 million.

(b) If Pneumo and Acme merged outright into a single company, such company would have had 49.1 percent of dollar sales of MSA machines in 1969; such an outright merger would violate Section 7 of the Clayton Act.

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

11. (a) Warner & Swasey Company (hereinafter referred to as "W&S") sold MSA machines and SSA machines in 1969. W&S has a subsidiary, The G. A. Gray Company (hereinafter referred to as "Gray"), which sold vertical boring mills in 1969. As of December 31, 1969, W&S had capital, surplus, and undivided profits aggregating more than \$1 million.

(b) Cleveland Trust does substantial banking business with W&S.

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

13. (a) White Consolidated Industries, Inc. (hereinafter referred to as "White") has a subsidiary, The Bullard Company (hereinafter referred to as "Bullard"), which sold MSA machines and vertical boring mills in 1969. As of December 31, 1969, White had capital, surplus, and undivided profits aggregating more than \$1 million.

(b) Cleveland Trust does substantial banking business with White.

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

(b) The following named companies are competitors in the following named products so that the elimination of competition by agreement between them would constitute a violation of the antitrust laws. Pneumo competes with W&S in the sale of MSA machines. Pneumo competes with Bullard in the sale of MSA machines. W&S, in its sale of SSA machines, competes with Bullard in its sale of MSA machines. Gray competes with Bullard in the sale of vertical boring mills.

#### IV

#### OFFENSES CHARGED

##### First Offense

15. Cleveland Trust, through its trust department, has acquired, in a fiduciary capacity, substantial parts of the stock of Acme and Pneumo. Cleveland Trust acquired 27 percent 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 percent of the outstanding

common stock of Acme and had qualified power to vote about 5 percent of such stock. As of November 27, 1968, Cleveland Trust had about 14 percent of the outstanding common stock of Pneumo. As of that date, Cleveland Trust had full power to vote all these shares.

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 and Pneumo.

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: Actual and potential competition between Acme and Pneumo in the manufacture and sale of MSA machines 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 and Pneumo 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 either Acme or Pneumo.

3. That Cleveland Trust be ordered to withdraw from participation in the direction, control, or management of either Acme or Pneumo.

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, Pneumo, W&S, and White.

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 million.

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

8. That plaintiff recover the costs of this suit.

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