

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,

Plaintiff,

v.

IVACO, INC.;
CANRON, INC.; and
JACKSON JORDAN, INC.,

Defendants.

Civil Action No.
G89-40032CA

Filed: January 12, 1989

VERIFIED 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 and other relief against the defendants named herein and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted against the defendants under Section 15 of the Clayton Act, 15 U.S.C. § 25, as amended, in order to prevent and restrain the violation, as hereinafter alleged, of Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended.

2. Ivaco, Inc. is a Canadian corporation. Venue is properly based in this District under 28 U.S.C. § 1391(d).

3. Canron, Inc. is a Canadian corporation. Venue is properly based in this District under 28 U.S.C. § 1391(d).

4. Jackson Jordan, Inc. is found and does business in the Western District of Michigan, within the meaning of 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

II.

DEFINITIONS

5. "Automatic tamper" means an electronically controlled machine that moves along a railroad track and corrects vertical and horizontal shifts in that track's position caused by trains traveling over the track. It corrects track deviations by (1) lifting the track to a desired height (leveling or grading); (2) moving the track laterally to a desired position (aligning); and (3) re-positioning ballast underneath the corrected track to anchor it in place (tamping). There are three types of automatic tampers: production tampers, which are used to correct mainline track; combination production and switch tampers, which are used to correct switches and mainline track; and chase tampers, which are used in conjunction with production tampers on mainline track.

6. "HHI" means the Herfindahl-Hirschman Index, a measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty,

and twenty percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

III.

THE DEFENDANTS

7. Ivaco, Inc. ("Ivaco") is made a defendant. Ivaco is a Canadian corporation with its principal offices in Montreal, Quebec. Ivaco, through its subsidiaries, manufactures automatic tampers in plants located in Columbia, South Carolina; Toronto, Ontario, Canada; and Queensland, Australia. Ivaco's United States sales of automatic tampers in 1987 were \$5.9 million, and its market share of 45 percent makes it the largest producer of automatic tampers in the United States. Ivaco is engaged in interstate commerce and in activities substantially affecting interstate commerce.

8. Canron, Inc. ("Canron") is made a defendant. Canron, a controlled subsidiary of Ivaco, is a Canadian corporation with its principal offices in Toronto, Ontario, Canada. Canron, through its subsidiaries, manufactures and sells automatic tampers in the United States. Canron is engaged in interstate commerce and in activities substantially affecting

interstate commerce.

9. Jackson Jordan, Inc. ("Jackson Jordan") is made a defendant. Jackson Jordan is a corporation organized and existing under the laws of the State of Illinois, with its principal offices in Schaumburg, Illinois. Jackson Jordan manufactures automatic tampers in a plant located in Ludington, Michigan. Jackson Jordan's United States sales of automatic tampers in 1987 were \$3.3 million, and its market share of 25 percent makes it the third largest producer of automatic tampers in the United States. Jackson Jordan is engaged in interstate commerce and in activities substantially affecting interstate commerce.

IV.

TRADE AND COMMERCE

10. Railroads are the principal customers for automatic tampers. Performance, price, and the time available to correct track deviations are the primary factors considered by railroads in selecting a tamper.

11. Railroads do not view any other means of correcting track deviations as an economic substitute for automatic tampers. A small but significant and nontransitory increase in the price of automatic tampers would not cause a significant number of customers to substitute any other method for correcting track deviations.

12. No manufacturer of any other product could switch manufacturing facilities from their present use to the manufacture of automatic tampers within one year in response to a small but significant and nontransitory increase in the prices of automatic tampers.

13. Manufacturers of automatic tampers sell and compete with one another for sales throughout the United States. No significant imports of automatic tampers are made into the United States.

14. The manufacture and sale of automatic tampers constitutes a line of commerce and a relevant product market, and the United States as a whole is a section of the country and a relevant geographic market in which automatic tampers are sold, within the meaning of Section 7 of the Clayton Act.

15. Only three companies manufacture and sell automatic tampers in the United States. If Ivaco, through its Canron subsidiary, were to combine in a joint venture its automatic tamper business with Jackson Jordan's, the number of competitors in the relevant market would be reduced to two, and the Ivaco/Jackson Jordan joint venture would account for a market share of about 70 percent.

16. At present, the HHI for the manufacture and sale of automatic tampers in the United States is 3549, based on United States sales. The proposed acquisition would increase the HHI by 2259 points to 5808. A market with a post-acquisition HHI of 1000 is moderately concentrated, and a market with a

post-acquisition HHI of 1800 is highly concentrated.

17. Entry into the manufacture and sale of automatic tampers is not easy because of, inter alia, the time and cost required to develop the necessary technology to produce automatic tampers, to plan the manufacture and sale of automatic tampers, to establish a technical sales force, and to market a new automatic tamper.

18. Manufacturers of automatic tampers ship and sell substantial quantities of automatic tampers across state lines to locations throughout the United States. They also purchase equipment and supplies from states other than the state in which their product is manufactured, and that equipment and those supplies are regularly shipped across state lines. The production and sale of automatic tampers are within the flow of and substantially affect interstate commerce.

V.

VIOLATION ALLEGED

19. Under the terms of a joint venture agreement between Ivaco's Canron subsidiary and Jackson Jordan, Ivaco and Jackson Jordan propose to combine their automatic tamper businesses in a new joint venture company. Ivaco, through its Canron subsidiary, will contribute to the joint venture company assets valued at approximately \$30 million, and Jackson Jordan will contribute assets valued at approximately \$18 million. The joint venture company will issue an equal number of shares of

its common stock to Jackson Jordan and to Tamper Corp., a wholly-owned subsidiary of Canron. Ivaco, through its Canron subsidiary, and Jackson Jordan plan to consummate their proposed joint venture agreement on January 17, 1989.

20. The effects of the proposed joint venture between Ivaco and Jackson Jordan may be substantially to lessen competition in 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 Ivaco and Jackson Jordan in the market for the manufacture and sale of automatic tampers in the United States will be eliminated;

(b) Competition generally in the market for the manufacture and sale of automatic tampers in the United States may be substantially lessened.

VI.

PRAYER

WHEREFORE, plaintiff prays:

1. That preliminary and permanent injunctions be issued preventing and restraining the defendants and all persons acting on their behalf from consummating the transaction alleged in paragraph 19 or from going forward with any other plan or agreement by which Ivaco or Canron and Jackson Jordan would combine their automatic tamper businesses or any of the


assets of their automatic tamper businesses.

2. That the proposed joint venture be adjudged a violation of Section 7 of the Clayton Act.

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

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

Dated:


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