

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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UNITED STATES OF AMERICA, :

Plaintiff, : Civil Action No. 13998

v. : Equitable Relief Sought

COMBUSTION ENGINEERING, INC., : Filed: Sept. 1, 1970

Defendant. :

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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 defendant named herein, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, 15 U.S.C. § 25, as amended, commonly known as the Clayton Act, in order to prevent and restrain the violation by the defendant, as hereinafter alleged, of Section 7 of said Act, 38 Stat. 731, 15 U.S.C. § 18, as amended.

2. Combustion Engineering, Inc. is found and transacts business within the District of Connecticut.

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II

THE DEFENDANT

3. Combustion Engineering, Inc. (hereinafter referred to as "Combustion") is named as the defendant herein. Combustion is a corporation organized and existing under the laws of the State of Delaware and maintains its principal executive office in New York, New York. Combustion maintains the principal executive office of its Industrial Group division in Windsor, Connecticut.

4. Combustion, through its Industrial Group division, is engaged in designing, engineering and constructing conventional and nuclear steam generating equipment, chemical, petrochemical, pulp and paper, and other processing systems and equipment. Combustion is a leading supplier to all manufacturing industries and the utility industry of fuel-burning equipment, materials handling equipment, crushing and pulverizing equipment, refractory and insulation material, industrial wire cloth, engineering services, and many other products. For the year 1969 Combustion had net sales of \$820,634,000 and total assets at the end of that year of \$562,411,000, and was the 136th largest industrial corporation in the United States in terms of sales.

III

TRADE AND COMMERCE

5. Industrial boilers are used throughout industry to generate the steam necessary to provide power, processing functions or heating at manufacturing facilities. An industrial boiler is an enclosure in which various fuels may be burned; the walls of this enclosure contain a series of water tubes. As the heat within the boiler

causes the water in these tubes to become steam, the steam is conveyed through a series of headers and drums to the point at which it is to be applied to its assigned function. Industrial boilers are generally classified as those with a capacity of from 25,000 to 500,000 pounds of steam per hour. They differ in use, design and capacity from smaller boilers used for commercial purposes and larger boilers used by the utilities industry. Industrial boilers may be prepackaged and shipped to the site at which they are to be used or they may be shipped in parts and assembled at the site.

6. In 1965, the year preceding the acquisition of the Wickes Boiler Division, sales of all industrial boilers were in excess of \$140 million. In that year, Combustion had sales of industrial boilers of approximately \$29 million; in terms of the total steam producing capacity of industrial boilers sold, Combustion accounted for about 20 percent, or the second largest share, of such sales. In that same year Wickes Boiler Division of the Wickes Corporation, had sales of industrial boilers of about \$12.7 million; in terms of steam producing capacity of all industrial boilers sold, Wickes Boiler Division accounted for about 8.6 percent, or the fourth largest share, of such sales.

7. The market for industrial boilers is highly concentrated. In the year 1965 sales by the four largest manufacturers represented about 74.5 percent of industrial boilers sold in terms of steam producing capacity. Following the acquisition of Wickes Boiler Division by Combustion, the four largest manufacturers of industrial boilers increased that percentage to about 82 percent.

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8. Industrial boilers are regularly sold and shipped in interstate commerce by producers thereof, including Combustion, to customers located throughout the United States.

IV

OFFENSE CHARGED

9. On or about June 20, 1966, defendant Combustion acquired the business and assets of the Wickes Boiler Division from the Wickes Corporation.

10. The effect of the aforesaid acquisition may be substantially to lessen competition or to tend to create a monopoly in the production and sale of industrial boilers in violation of Section 7 of the Clayton Act, in the following ways, among others:

- (a) actual and potential competition between Combustion and the Wickes Boiler Division has been eliminated;
- (b) actual and potential competition in the manufacture and sale of industrial boilers has been substantially lessened; and
- (c) concentration in the manufacture and sale of industrial boilers has been substantially increased.

PRAYER

WHEREFORE, plaintiff prays:

1. That the aforesaid acquisition of the Wickes Boiler Division by Combustion, as hereinbefore alleged, be adjudged and decreed to be unlawful, in violation of Section 7 of the Clayton Act.

2. That Combustion be ordered and directed to divest itself of the assets and business acquired from Wickes Corporation, and to provide the recipient of such divestiture with such assets as shall be necessary for a viable, independent operation.

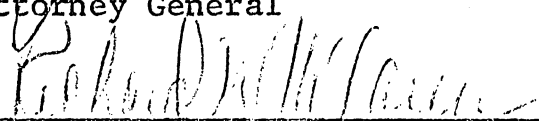
3. That the defendant Combustion be enjoined from acquiring the stock or assets of any other firm that is engaged in the manufacture and sale of industrial boilers, except upon prior approval of the plaintiff or the Court.

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

5. That the plaintiff recover the costs of this suit.



JOHN N. MITCHELL
Attorney General



RICHARD W. McLAREN
Assistant Attorney General



BADDIA J. RASHID

NORMAN H. SEIDLER

Attorneys, Department of Justice

STEWART H. JONES
United States Attorney

BERNARD A. L. FRIEDMAN

Attorney, Department of Justice