UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. WHITE CONSOLIDATED INDUSTRIES, INC. and WHITE MOTOR CORPORATION, Defendants.	Civil Action No. C-71-91 Filed: January 27, 1971

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 defendants named herein and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This Complaint is filed and this proceeding is instituted against the defendants named herein under Section 15 of the Act of Congress of October 15, 1914, as amended (15 U.S.C. § 25), commonly known as the Clayton Act, in order to prevent and restrain violation by the defendants of Section 7 of that Act, as amended (15 U.S.C. § 18).

2. Defendants White Consolidated Industries, Inc. and White Motor Corporation have their principal places of business, transact business and are found within the Northern District of Ohio, Eastern Division.

II

THE DEFENDANTS

A. White Consolidated

3. White Consolidated Industries, Inc. is made a defendant herein. It is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 11770 Berea Road, Cleveland, Ohio. As used herein, "White Consolidated" means White Consolidated Industries, Inc. and all corporations which it controls, directly or indirectly, but does not include Allis-Chalmers Manufacturing Company.

4. In 1969, White Consolidated was the 146th largest industrial corporation in the United States in terms of sales and the 142nd largest in assets. It had sales of $767,601,000 and net income of $29,853,000 in 1969. Its assets at the end of 1969 were $660,754,000.

5. White Consolidated is a highly diversified company. In 1969, White Consolidated derived 45 percent of its sales from products for the home, 32 percent from machinery and equipment for industry, 16 percent from fabricated products for industry and commerce, and 7 percent from plant engineering. White Consolidated's products for the home include laundry and kitchen appliances, air conditioners, heaters and furnaces. Its machinery and equipment for industry include machine tools, printing presses, textile preparatory and knitting machinery, shoe repair machinery, rolling mills and related equipment, paving machinery, and food and chemical processing machinery. Its fabricated products

for industry and commerce include valves and controls, various fiberglass products, commercial air conditioning and heating equipment, vehicle heaters, commercial freezers and refrigerators, compressors, steel grating, and castings. Forty-seven percent of the 1969 sales of its domestic manufacturing plants was derived from the sale of non-electrical machinery.

6. White Consolidated's sales and assets have grown rapidly, primarily due to its active acquisition program. During the period 1955 through 1969, its sales increased from $19,655,000 to $767,601,000. During the period 1966 through 1969, White Consolidated acquired three companies with assets between $10 million and $49 million and four companies with assets between $50 million and $125 million. White Consolidated's acquisition program is directed basically at companies whose principal activities are metal working and machinery production, i.e., manufacturing activities which are compatible with those of White Consolidated.

7. In 1968, White Consolidated also acquired in excess of 25 percent of the stock of Allis-Chalmers Manufacturing Company (hereinafter referred to as "Allis-Chalmers") with the announced intention of acquiring the remainder of the Allis-Chalmers' stock. As a result of litigation instituted by Allis-Chalmers in the United States District Court for the District of Delaware, White Consolidated is presently enjoined from acquiring additional Allis-Chalmers stock and from voting its Allis-Chalmers stock to obtain representation on Allis-Chalmers' Board. White Consolidated, however, continues to retain its stock interest in Allis-Chalmers, an interest which has a present market value of approximately $50 million.

8. In 1969, Allis-Chalmers was the 140th largest industrial corporation in the United States in terms of sales and the 133rd largest in assets. It had sales of $804,736,000 and net income of $18,422,000 in 1969. Its assets at the end of 1969 were $702,616,000. In 1969, Allis-Chalmers derived 31 percent of its sales from construction equipment and overseas operations, 28 percent from electrical products, 23 percent from farm machinery and equipment, 13 percent from mechanical products, and 5 percent from consumer products.

B. <u>White Motor</u>

9. White Motor Corporation is made a defendant herein. It is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business at 100 Erieview Plaza, Cleveland, Ohio. As used herein, "White Motor" means White Motor Corporation and all corporations which it controls, directly or indirectly.

10. In 1969, White Motor was the 118th largest industrial corporation in the United States in terms of sales and the 168th largest in assets. It had sales of $950,455,000 and net income of $12,435,000 in 1969. Its assets at the end of 1969 were $558,779,000.

11. White Motor is a diversified company. In 1969, White Motor derived 65 percent of its sales from heavy-duty trucks, 15 percent from farm machinery and equipment, and 20 percent from construction and industrial equipment. Forty-five percent of the 1969 sales of its domestic manufacturing plants was derived from the sale of non-electrical machinery.

12. White Motor has engaged in an active acquisition program. During the period 1955 through 1969, its sales increased from $179,944,000 to $950,455,000. Since 1953,

White Motor has acquired three heavy-duty truck manufacturers, two domestic farm machinery and equipment manufacturers, two engine manufacturers, and one off-highway construction vehicle manufacturer. White Motor's acquisition program is directed basically at companies whose product lines are compatible with those of White Motor.

III

TRADE AND COMMERCE

13. In 1969, both White Consolidated and White Motor ranked among the nation's 150 largest industrial corporations in sales and among the 170 largest in assets. Combined, they would have constituted the 57th largest in sales and the 82nd largest in assets. Each is engaged in interstate commerce.

A. The Merger Movement and the Trend Toward Concentration in Manufacturing and the Non-Electrical Machinery Field

14. In the last twenty years, an accelerating merger movement in the United States has substantially increased aggregate concentration and eliminated the independent existence of a rising number of very large firms. This trend has reduced the number of firms likely to enter many of the nation's concentrated industries, the number of sources of competitive innovation, and the centers of decision making upon important industrial and commercial matters. During the period 1948 through 1969, some 1,417 manufacturing and mining concerns with assets over $10 million, and with combined assets over $63 billion, were absorbed by other firms through merger and acquisition; concerns which accounted for more than half of the combined assets were acquired during the last four years of the period. In 1967, six firms with assets of more than $250 million were absorbed by merger or acquisition; in 1968, twelve such firms were absorbed; and in 1969, six such firms were absorbed.

15. In 1969, the 195,000 manufacturing corporations in the United States had sales of $695 billion and assets of $554 billion. Ownership of manufacturing assets in the United States is becoming increasingly concentrated. The proportion of the total assets of the nation's manufacturing companies held by the 200 largest firms increased from 45 percent in 1947 to 55.5 percent in 1963 and to 60.2 percent in 1968. The great bulk of this increase in concentration has resulted from mergers and acquisitions, a movement in which both White Consolidated and White Motor have been active participants.

16. During the period 1960 through 1969, 99 non-electrical machinery producers with individual assets over $10 million were absorbed through merger or acquisition. The total assets of the foregoing companies amounted to $4.3 billion. More than half of these firms, accounting for more than half of the total assets, were acquired during the period 1967 through 1969. Both White Consolidated and White Motor have been active participants in the non-electrical machinery merger movement.

B. Actual Competition

17. Allis-Chalmers and White Motor are substantial competitors in the manufacture and sale of farm machinery and equipment. In 1969, total sales of farm machinery and equipment in the United States amounted to approximately $3.5 billion. In that year, Allis-Chalmers had farm machinery and equipment sales of approximately $179.6 million or about 5.1 percent of the total market, and White Motor had farm machinery and equipment sales of approximately $89 million or about 2.6 percent of the total market.

18. Within the foregoing farm machinery and equipment market, self-propelled combines and farm tractors having a power take off rating of 35 horsepower or more are distinct submarkets. In 1969, total domestic sales of such combines amounted to approximately $273.4 million. In that year, Allis-Chalmers had approximately $51.4 million in sales of such combines, accounting for about 18.8 percent of the total of such sales. White Motor, with approximately $13.5 million in 1969 sales of such combines, accounted for about 4.9 percent of the total of such sales. In 1969, total domestic sales of tractors with a power take off rating of 35 horsepower or more amounted to approximately $929.5 million. Allis-Chalmers' sales of such tractors in 1969 amounted to approximately $53.8 million or about 5.8 percent of the total of such sales. White Motor, with approximately $63.9 million in sales of such tractors, accounted for about 6.9 percent of the total of such sales in 1969. In addition, Allis-Chalmers and White Motor are substantial competitors in the manufacture and sale of corn heads, hay balers, forage harvesters, and mower conditioners in the United States.

19. Allis-Chalmers and White Motor are substantial competitors in the manufacture and sale of industrial backhoe loaders and industrial forklifts. In 1969, total sales of industrial backhoe loaders in the United States amounted to approximately $162.9 million. In that year, Allis-Chalmers' sales of industrial backhoe loaders were approximately $10 million or about 6.1 percent of the total of such sales and White Motor's sales of industrial backhoe loaders were substantial. In 1969, total sales of industrial forklifts in the United States were approximately $20.8 million. Allis-Chalmers' industrial forklift

sales in 1969 were approximately $3.3 million or about 15.9 percent of the total of such sales while White Motor's sales of industrial forklifts were substantial.

20. Allis-Chalmers and White Motor are substantial competitors in the manufacture and sale of pneumatic tire lift trucks with lift capacities of 4,000 to 7,000 pounds and cushion tire lift trucks with lift capacities of 2,000 to 6,000 pounds. In 1969, total domestic sales of pneumatic tire lift trucks with lift capacities of 4,000 to 7,000 pounds amounted to approximately $110 million. In that year, Allis-Chalmers had sales of such lift trucks of approximately $8.2 million or about 7.5 percent of the total of such sales and White Motor had sales of such lift trucks of approximately $2.9 million or about 2.6 percent of the total of such sales. In 1969, total domestic sales of cushion tire lift trucks with lift capacities of 2,000 to 6,000 pounds amounted to approximately $210 million. In that year, Allis-Chalmers had sales of such lift trucks of approximately $26 million or about 12.4 percent of the total of such sales and White Motor had sales of such lift trucks of approximately $7.5 million or about 3.6 percent of the total of such sales.

21. Allis-Chalmers and White Motor are substantial competitors in the manufacture and sale of industrial gasoline engines with displacements between 100 and 300 cubic inches. In 1969, total domestic sales of gasoline engines with displacements between 100 and 300 cubic inches amounted to approximately $75 million. In that year, Allis-Chalmers had sales of such gasoline engines

of approximately $4.2 million or about 5.6 percent of the total of such sales and White Motor had sales of such gasoline engines of approximately $1.8 million or about 2.4 percent of the total of such sales.

C. Vertical Relationship

22. White Consolidated is a substantial supplier and White Motor is a substantial purchaser of hot water heaters, ventilators, air conditioners and combination heater air conditioners for use in cabs of trucks and farm and construction vehicles. In 1969, total sales in this market in the United States were approximately $30 million. In the same year, White Consolidated had sales in this market of about $2,387,000 or 7.9 percent of the market. White Consolidated, which presently manufactures and sells hot water heaters, ventilators, and combination heater air conditioner units in this market, is also a likely entrant into the manufacture and sale of air conditioners. In 1969, White Motor had purchases in this market of $2,626,606 or 8.8 percent of the total purchases of such products.

D. Reciprocity

23. As used herein, "reciprocity" refers to a seller's practice of utilizing the volume or potential volume of its purchases to induce others to buy its products or services. "Reciprocity effect" refers to the tendency of a firm selling or desiring to sell to another company to channel its purchases to that company.

24. A firm's reciprocity power and ability to benefit from reciprocity effect grow as its purchasing capacity and product diversity are increased. White Consolidated and White Motor together purchase and sell

a much wider range of products and services than either of them does separately.

25. There is at least one area in which the merger of White Consolidated and White Motor is likely to give rise to significant opportunities for reciprocity and reciprocity effect. Reciprocity is a factor which has significantly influenced the purchasing decisions of many large steel companies. White Consolidated's position as a major manufacturer of rolling mills, rolls and finishing and processing lines for the steel industry may be benefited by reason of White Motor's substantial steel purchases.

IV

OFFENSE CHARGED

26. On or about October 6, 1970, White Consolidated and White Motor entered into an Agreement and Supplemental Agreement of Merger pursuant to which White Motor will be merged into a wholly-owned subsidiary of White Consolidated. The merger is expected to be consummated on or about January 29, 1971.

27. The effect of the aforesaid merger may be substantially to lessen competition or tend to create a monopoly, in violation of Section 7 of the Clayton Act, in the following ways, among others:

(a) The current trend of mergers of large firms will be furthered and encouraged, thereby (i) increasing the concentration of control of assets devoted to manufacturing and particularly to the manufacture of non-electrical machinery, (ii) reducing the number of firms capable of entering concentrated markets, (iii) reducing the number of firms with the capability and incentive for competitive innovation, (iv) increasing the barriers to entry in concentrated markets, and (v) diminishing the vigor of competition by increasing actual and potential customer-supplier relationships among leading firms in concentrated markets;

(b) Actual independent competition by and between White Motor and Allis-Chalmers may be eliminated in various lines of commerce;

(c) Actual and potential competitors of White Consolidated may be foreclosed from selling certain products to the merged firms; and

(d) The power of White Consolidated and White Motor to employ reciprocity and to benefit from reciprocity effect in the sale and purchase of certain products will be substantially enhanced, and the markets for their competitors' goods will be correspondingly narrowed.

<u>PRAYER</u>

WHEREFORE, plaintiff prays:

1. That White Consolidated's merger with White Motor be adjudged a violation of Section 7 of the Clayton Act.

2. That, pending final adjudication of the merits of this Complaint, a temporary restraining order and a preliminary injunction be issued against White Consolidated and White Motor preventing and restraining them from taking any action in furtherance of the merger agreements described in paragraph 26 or any similar plan or agreement.

3. That White Consolidated and White Motor and all persons acting on their behalf be perpetually enjoined from carrying out the merger agreements described in paragraph 26 or any similar plan or agreement.

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

5. That the plaintiff recover its taxable costs.

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