

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,  
Department of Justice  
Antitrust Division  
1401 H Street, N.W.  
Suite 3000  
Washington, D.C. 20530

Plaintiff,

v.

AKTIEBOLAGET VOLVO,  
S-405 08 Goteborg  
Sweden

VOLVO TRUCKS NORTH AMERICA, INC.,  
7900 National Service Road  
Greensboro, North Carolina 27409

RENAULT S.A.,  
13-15 Quai Le Gallo  
Boulogne-Billancourt 92100  
France

RENAULT V.I. S.A.,  
129 rue Servient  
"La Part-Dieu"  
69003 Lyon, France

and

MACK TRUCKS, INC.  
2100 Mack Boulevard  
Allentown, Pennsylvania 18105

Defendants.

CASE NUMBER 1:00CV03006  
JUDGE: Emmet G. Sullivan  
DECK TYPE: Antitrust  
DATE STAMP: 12/18/2000

## COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against defendants to prevent Aktiebolaget Volvo's ("AB Volvo") proposed acquisition of Renault V.I. S.A. ("Renault V.I."), which includes Mack Trucks, Inc. ("Mack"), from Renault S.A. ("Renault"), and alleges as follows:

1. AB Volvo and Renault compete vigorously against each other in the development, production, and sale of heavy duty trucks, configured with a cab over the engine which the driver can enter at a point low to the ground. These heavy duty, "low cab over engine" trucks or "LCOE Trucks" are used in the refuse, concrete pumping, aircraft refueling, and home heating oil industries. Renault and AB Volvo respectively are the largest and second largest producers, and the only two significant producers, of heavy duty LCOE Trucks in the United States.

2. The proposed acquisition will eliminate substantial head-to-head competition between AB Volvo and Renault in the development, production and sale of heavy duty LCOE Trucks, which has benefitted consumers significantly. The proposed transaction will result in AB Volvo accounting for approximately 86 percent of heavy duty LCOE Trucks sold in the United States and will give AB Volvo the power to unilaterally increase the price, decrease the quality, decrease the level of service, and decrease the amount of product improvement of these trucks.

3. Unless the proposed acquisition is enjoined, AB Volvo's acquisition of Renault V.I. will substantially lessen competition in the development, production, and sale of heavy duty LCOE Trucks sold in the United States in violation of Section 7 of the Clayton Act, as amended,

15 U.S.C. § 18.

I.

JURISDICTION AND VENUE

4. This Complaint is filed by the United States under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

5. AB Volvo and Renault sell heavy duty LCOE Trucks in the flow of interstate commerce. Defendants' activities in producing, marketing, promoting, and selling heavy duty LCOE Trucks also substantially affect interstate commerce. Defendants purchase substantial quantities of materials, equipment, supplies, and services for use in their respective businesses from sources located outside of the District of Columbia. This Court has jurisdiction over the subject matter of this action and the parties pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1331, 1337(a) and 1345.

6. Defendant Volvo Trucks North America, Inc. ("VTNA") and Defendant Mack transact business within the District of Columbia. Moreover, all defendants have stipulated to venue in this District. Venue is proper pursuant to 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

II.

DEFENDANTS

7. AB Volvo is a foreign corporation organized and existing under the laws of Sweden that has its corporate headquarters and principal place of business in Gotenburg, Sweden. AB Volvo is an international manufacturer of trucks, construction equipment, and engines. AB Volvo, through its subsidiary VTNA, is the second largest United States manufacturer of heavy

duty LCOE Trucks. AB Volvo reported revenue of approximately \$14.7 billion in 1999.

8. VTNA is a corporation organized and existing under the laws of the state of Delaware with its corporate headquarters and principal place of business in Greensboro, North Carolina. VTNA, which is a subsidiary of AB Volvo, produces trucks in Dublin, Virginia. VTNA is the second largest United States manufacturer of heavy duty LCOE Trucks. VTNA's 1999 revenues were approximately \$2.39 billion.

9. Renault is a foreign corporation organized and existing under the laws of France that has its corporate headquarters and principal place of business in Boulogne-Billancourt, France. Renault is an international manufacturer of automobiles, trucks, buses, and engines. Renault reported revenue of approximately \$39 billion in 1999.

10. Renault V.I. is a foreign corporation organized and existing under the laws of France with its corporate headquarters and principal place of business in Lyon, France. Renault V.I. is a subsidiary of Renault and produces trucks and truck engines.

11. Mack is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its corporate headquarters and principal place of business in Allentown, Pennsylvania. Mack, which is a subsidiary of Renault V.I., produces trucks and engines. Mack is the largest United States manufacturer of heavy duty LCOE Trucks. Mack reported revenues of approximately \$2.2 billion in 1999.

### III.

#### THE PROPOSED TRANSACTION

12. On or about July 18, 2000, AB Volvo entered into an agreement with Renault to acquire Renault V.I. from Renault in exchange for 15% of AB Volvo's outstanding voting

securities which have an approximate value of \$1.8 billion. ("Purchase Agreement").

#### IV.

### TRADE AND COMMERCE

#### A. Relevant Product Market

13. LCOE Trucks are trucks configured with the cab located over or in front of the engine, and a windshield which is even with the front bumper. This design gives heavy duty LCOE Trucks superior visibility and maneuverability compared to conventional cab, heavy duty, straight trucks which are designed with their engines in front of the cab. LCOE Trucks have a lower entry point to the cab (18 inches), compared to conventional straight trucks (almost four feet).

14. Heavy duty trucks (or "class 8" trucks) are those trucks capable of carrying the heaviest payload capacities or gross vehicle weights, exceeding 33,000 pounds. In addition to payload capacity, heavy duty trucks are distinguished from lighter duty trucks by large powerful diesel engines and other heavy duty components.

15. The design of heavy duty LCOE Trucks makes them uniquely suited to specific applications. Most heavy duty LCOE Trucks are sold to the refuse industry, which requires heavy duty trucks to handle the weight of the waste material being hauled. Refuse companies often attach a mechanical fork lift to heavy duty LCOE Trucks to lift commercial dumpsters over the cab, emptying them into the body of the truck. Such a mechanical fork lift cannot be used with trucks designed with engines in front of the cab because that design has an extended hood which would block the lift's operation. Similarly, the LCOE design provides superior maneuverability and visibility needed in urban and residential streets and alleys. Finally, the low height for entry

into the cab makes the LCOE design significantly preferable for refuse use because drivers need to exit and enter the truck often. The ease of cab entry and the superior maneuverability and visibility of heavy duty LCOE Trucks also makes them the truck of choice for various other applications such as home heating oil delivery in the Northeastern United States, concrete pumping and aircraft refueling.

16. A sufficient number of purchasers of heavy duty LCOE Trucks would not turn to substitutes in response to a small but significant increase in the price of heavy duty LCOE Trucks to make such price increase unprofitable. Accordingly, the development, production, and sale of heavy duty LCOE Trucks is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

B. Relevant Geographic Market

17. The relevant geographic market for the purposes of analyzing this transaction is the United States. Virtually all heavy duty LCOE Trucks sold in the United States are manufactured in the United States and almost none are imported. The foreign-headquartered truck manufacturers that sell heavy duty LCOE Trucks in the United States manufacture the trucks at facilities located in the United States. In general, heavy duty LCOE Trucks used in the United States are built to carry heavier loads than their counterparts built for use in other geographic markets. Classifications, standards, and customer preferences for heavy duty LCOE Trucks produced for Asia and Europe differ from those produced for the United States.

18. The United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act. A small but significant increase in the price of heavy duty LCOE Trucks would not cause a sufficient number of purchasers to switch to heavy duty LCOE Trucks

manufactured outside the United States so as to make such a price increase unprofitable.

C. Anticompetitive Effects

19. The proposed acquisition will reduce competition substantially in the development, production and sale of heavy duty LCOE Trucks in the United States. Mack and VTNA are, respectively, the largest and second largest producers of heavy duty LCOE Trucks in the United States. Mack and VTNA directly compete against one another to develop, produce and sell heavy duty LCOE Trucks in the United States. This direct and aggressive competition between Mack and VTNA benefits consumers through lower prices, higher quality, better service, and improved products. If the acquisition of Renault V.I. by AB Volvo is permitted, this competition would be eliminated.

20. Mack and VTNA are the only significant suppliers of heavy duty LCOE Trucks in the United States: in this highly concentrated market, Mack has approximately a 53 percent market share, and VTNA has approximately a 33 percent market share. After the acquisition, the combined firm would account for approximately 86 percent of heavy duty LCOE Truck sales in the United States.

21. The already highly concentrated heavy duty LCOE Truck market will become substantially more concentrated if AB Volvo acquires Renault V.I. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI," which is defined and explained in Appendix A), the proposed transaction will increase the HHI by more than 4000 points to a post-merger level of about 7508, well in excess of the level which would ordinarily raise significant antitrust concerns.

22. The proposed acquisition will raise the combined firms' share of industry sales to

the level where it will have the ability and incentive to raise prices unilaterally. The heavy duty LCOE Trucks of VTNA and Mack are significantly differentiated from their other competitors' heavy duty LCOE Trucks in terms of their actual and proven track record for reliability, maintenance requirements, and significant components. Mack's and VTNA's heavy duty LCOE Trucks are the closest substitutes for each other and their customers would not divert a sufficient number of their purchases to competing heavy duty LCOE Trucks to defeat a significant price increase by defendants following a merger.

D. Entry Is Unlikely to Deter the Exercise of Market Power

23. Entry into the development, production and sale of heavy duty LCOE Trucks in the United States is difficult, time consuming and expensive. Entry would not be timely, likely or sufficient to deter the likely exercise of market power in the sale of heavy duty LCOE Trucks by the combined firm in the reasonably foreseeable future.

24. Entry, even by an established producer of other types of heavy duty trucks, would require a high sunk capital investment in research and development and equipment and facilities. A new entrant would also need to develop an effective dealer network for selling and servicing heavy duty LCOE Trucks and would need to develop a track record for reliability and maintenance before it could attract significant sales from Mack and VTNA. Even an established producer of other types of heavy duty trucks with a dealer network for those trucks would need in excess of two years to design, produce, and gain customer acceptance of a new heavy duty LCOE Truck.

V.

VIOLATIONS ALLEGED

25. The proposed transaction will likely have the following effects, among others:
- a. Competition generally in the development, production and sale of heavy duty LCOE Trucks in the United States would be substantially lessened;
  - b. Actual and potential competition between AB Volvo and Renault in the development, production and sale of heavy duty LCOE Trucks in the United States would be eliminated;
  - c. Prices charged for heavy duty LCOE Trucks will likely increase and the quality, level of service and the amount of product improvement of heavy duty LCOE Trucks would likely decline in the United States.

26. Unless enjoined, the proposed transaction will violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

VI.

REQUESTED RELIEF

Plaintiff requests:

1. That the proposed acquisition of Renault V.I. by AB Volvo be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18;
2. That defendants and all persons acting on their behalf be permanently enjoined and restrained from entering into or carrying out any agreement, understanding or plan, the effect of which would be to combine the

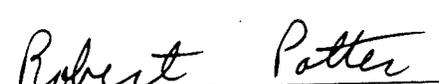
businesses or assets of the defendants;

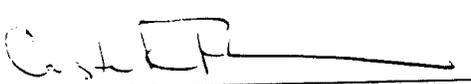
3. That plaintiff recover the costs of this action; and
4. That plaintiff receive such other and further relief as the case requires and the Court deems proper.

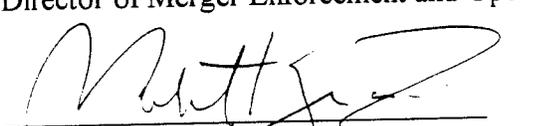
Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

  
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Director of Merger Enforcement and Operations

  
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Dated: December 18, 2000

  
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## APPENDIX A

### DEFINITION OF "HHI"

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted 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 2600 ( $30^2 + 30^2 + 20^2 + 20^2 = 2600$ ). 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.

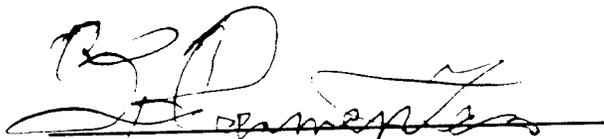
Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise significant antitrust concerns under the Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that copies of the COMPLAINT, FINAL JUDGMENT, HOLD SEPARATE STIPULATION AND ORDER, and UNITED STATES' EXPLANATION OF CONSENT DECREE PROCEDURES have been served upon Aktiebolaget Volvo; Volvo Trucks North America, Inc.; Renault S.A.; Renault V.I. S.A.; and Mack Trucks, Inc., by placing copies of aforementioned documents in the U.S. Mail, directed to each of the above-named parties at the addresses given below, this 18th day of December, 2000.

Aktiebolaget Volvo and Volvo  
Trucks North America, Inc.  
c/o Kevin Arquit, Esq.  
Clifford Chance Rogers & Wells LLP  
200 Park Avenue  
New York, NY 10166-0153

Renault S.A.,  
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