UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Department of Justice
Antitrust Division
1401 H Street, NW, Suite 3000
Washington, DC 20530

Plaintiff,

v.

AMSTED INDUSTRIES, INC.,
Two Prudential Plaza
180 North Stetson Street, Suite 1800
Chicago, IL 60601

Defendant.

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain equitable and other relief against defendant Amsted Industries, Inc. ("Amsted") to remedy the harm to competition caused by Amsted's acquisition of FM Industries ("FMI"). The United States alleges as follows:

I.

NATURE OF ACTION

1. Prior to Amsted's acquisition of FMI on December 1, 2005, the two firms vigorously competed with each other to sell new and reconditioned end-of-car cushioning units ("EOCCs") to railroads throughout the United States.

2. Amsted's acquisition of FMI has reduced the number of new EOCC suppliers from two to one, resulting in a merger to monopoly. The transaction also has reduced the number of reconditioned EOCC suppliers from three to two. Amsted's acquisition of FMI consolidated 90 percent of all EOCC sales in the United States.

3. The transaction has substantially lessened competition in the design, manufacture, and sale of new and reconditioned EOCCs and has created a monopoly in the design, manufacture, and sale of new EOCCs. As a result, prices for new and reconditioned EOCCs have increased and likely will continue to increase, the quality of EOCCs likely will decline, innovation relating to EOCCs likely will decline, and services currently offered in the EOCC markets have become and will continue to be less favorable to railroad customers. The United States, through this suit, asks the court to declare the defendant's conduct illegal and to restore the benefits of competition that were lost as a result of the transaction.

II.

JURISDICTION AND VENUE

4. The United States brings this action against defendant Amsted under Section 15 of the Clayton Act, 15 U.S.C. § 25, as amended, to prevent and restrain Amsted from continuing to violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 2 of the Sherman Act, 15 U.S.C. § 2.

5. Defendant designs, manufactures, and sells new and reconditioned EOCCs in the flow of interstate commerce. Defendant's activities in designing, manufacturing, and selling EOCCs substantially affect interstate commerce. This Court has subject matter jurisdiction over

this action and over the defendant pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(c). Defendant has consented to venue and personal jurisdiction in this judicial district.

III.

PARTIES TO THE TRANSACTION

7. Amsted is a Delaware corporation with its principal place of business in Chicago, Illinois. Amsted's EOCC sales in the United States are made through its wholly owned subsidiary, ASF-Keystone. ASF-Keystone is a Delaware corporation with its principal place of business in Granite City, IL. Amsted is a diversified manufacturer of industrial components for the railroad, vehicular, and construction markets. Amsted's products include a range of railroad car parts, including couplers, side frames, bolsters, draft gears, and EOCCs. In 2005, Amsted had approximately $2.5 billion in sales. Amsted's EOCC manufacturing facility is located in Camp Hill, PA. Amsted's new and reconditioned EOCCs are shipped to customers throughout the United States and account for approximately $22 million in sales.

8. Progress Rail Services Holding Corporation ("Progress Rail") is a Delaware corporation with its principal place of business in Albertville, AL and is a wholly owned subsidiary of Caterpillar, Inc., a Delaware corporation. Progress Rail is one of the largest suppliers of new and reconditioned railroad car parts, rail and trackwork components, and railroad car repair services to the railroad industry in the United States. Progress Rail has

manufacturing facilities in 23 states, Canada, and Mexico. In 2005, Progress Rail had approximately $1.2 billion in sales.

9. Progress Rail's EOCC sales in the United States were made through its wholly owned subsidiary, FMI, formerly a Texas corporation with its principal place of business and EOCC manufacturing facility in Fort Worth, TX. FMI shipped new and reconditioned EOCCs to customers throughout the United States. In 2005, FMI had sales of approximately $24 million.

IV.

THE TRANSACTION

10. On December 1, 2005, Amsted and Progress Rail completed an asset swap by which Progress Rail conveyed to Amsted its wholly owned subsidiary, FMI. On April 25, 2006, Amsted dismantled FMI by firing its employees and disposing of virtually all FMI plant equipment through an auction.

V.

TRADE AND COMMERCE

A. The Relevant Product Markets

11. All freight cars undergo considerable stress from "longitudinal" forces, or forces exerted along the length of the train. During transit, freight cars are subjected to alternating longitudinal forces called draft and buff forces. Draft forces are pulling forces caused by train acceleration when freight cars are stretched or pulled apart. Buff forces are compressive forces caused by train deceleration when freight cars are pushed together. Freight cars also undergo considerable stress during switching and coupling at train depots. In order for a railroad to

connect one freight car to another, it must collide the cars at significant speed. The impacts sustained during switching and coupling, like draft and buff forces, can cause serious damage to sensitive cargo inside a freight car.

12. All freight cars are equipped with some type of energy absorption device to mitigate the effects of draft, buff, and coupling stresses. The most common device is a draft gear, which provides the minimum protection required for safe railroad operation. Draft gears rely on friction between two steel plates to absorb and dissipate the energy created by longitudinal forces impacting the freight car. Another type of device is commonly referred to as an "elastomeric device." Elastomeric devices are lightweight and low cost, but they are not suitable for all applications as they return much of the absorbed energy back into the draft system.

13. Railroads must use EOCCs, a specialized energy absorption device, when transporting sensitive cargos on freight cars. These shock absorbing devices use hydraulics (e.g., pressurized nitrogen gas and oils) to minimize longitudinal forces by absorbing and dissipating the maximum buff, draft, and coupling forces experienced during transit. By reducing and absorbing the forces exerted on freight cars, EOCCs ensure that sensitive cargo is not damaged during transit. Each EOCC unit consists of a piston, shaft, cylinder, end bells, and a rod that attaches the piston to the freight car coupler. Each EOCC-equipped freight car requires two EOCCs, one at each end of the freight car.

14. Other energy absorption devices, such as draft gears and elastomeric devices, do not provide the necessary level of cushioning required by customers shipping sensitive goods on

freight cars. EOCCs therefore are critical components for freight cars carrying sensitive commodities, such as steel coils, automobile products, electronics, lumber, and paper products. Railroads and new freight car builders do not consider the price or availability of draft gears or elastomeric devices when soliciting prices for EOCCs from prospective suppliers.

15. Though sensitive cargos can be transported by "intermodal" freight cars with articulated connectors, railroads cannot substitute intermodal transportation for freight cars equipped with EOCCs. Intermodal freight cars are specially designed railcars that allow standard cargo containers to be stacked for rail transport. The cars must travel in groups connected by a "slackless" articulated coupling system. The coupling system transfers longitudinal forces to the ends of the intermodal group, protecting the containers from damage. Intermodal freight cars with articulated connectors do not provide sufficient cushioning for sensitive commodities, cannot physically transport certain sensitive commodities (such as automobiles and certain lumber products), and are subject to additional costs and operational constraints. When soliciting prices for EOCCs from prospective suppliers, railroad customers do not consider the cost or availability of transporting goods using intermodal freight cars.

16. Accordingly, railroad customers can use only freight cars equipped with EOCCs to carry certain sensitive goods and cannot substitute draft gears, elastomeric devices, or intermodal transport for EOCCs on freight cars.

17. Railroad customers use either new or reconditioned EOCCs when equipping freight cars. However, customers building new freight cars almost always are required to use only new

EOCCs in construction. Thus, customers building new freight cars would be unable to substitute reconditioned EOCCs in building new cars.

18. Similarly, customers servicing older freight cars that have been in service for more than a decade almost always choose reconditioned EOCCs because the cost of reconditioned units is substantially lower than the cost of new units. Thus, customers are unlikely to substitute new EOCCs for reconditioned EOCCs for use on older freight cars.

19. A small but significant increase in the price of new EOCCs would not cause purchasers to substitute draft gear, elastomeric devices, intermodal cars, or reconditioned EOCCs so as to make such a price increase unprofitable. Accordingly, the design, manufacture, and sale of new EOCCs is a separate and distinct line of commerce and a relevant product market for the purpose of analyzing the effects of the acquisition under Section 7 of the Clayton Act and Section 2 of the Sherman Act.

20. A small but significant increase in the price of reconditioned EOCCs would not cause purchasers to substitute draft gear, elastomeric devices, intermodal cars, or new EOCCs so as to make such a price increase unprofitable. Accordingly, the design, manufacture, and sale of reconditioned EOCCs is a separate and distinct line of commerce and a relevant product market for the purpose of analyzing the effects of the acquisition under Section 7 of the Clayton Act and Section 2 of the Sherman Act.

B. The Relevant Geographic Market

21. All EOCCs in the United States are designed, manufactured, and sold in the United States. Amsted sells, and FMI sold, EOCCs to customers located throughout the United States.

22. The United States is the relevant geographic market for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act and Section 2 of the Sherman Act.

C. Anticompetitive Effects

23. Before Amsted's acquisition of FMI, the markets for EOCCs were highly concentrated. For new EOCCs, the merging entities were the only two suppliers. For reconditioned EOCCs, the market was limited to three suppliers, and the merging parties had a combined market share of over 80%. The markets became substantially more concentrated following the acquisition. Using the Herfindahl-Hirschman Index ("HHI"), an explanation of which appears in Appendix A attached hereto, the transaction resulted in a post-merger concentration of over 7000 (an increase of over 2700) in the market for reconditioned EOCCs, while the consolidation in the market for new EOCCs resulted in a monopoly.

24. Amsted and FMI directly constrained each other's prices, limiting overall price increases for new and reconditioned EOCCs despite significant materials cost increases. Before the transaction, Amsted created forecasts that contemplated significant price increases resulting from the merger. These price increases were aimed at achieving certain margin targets each year that would result in total additional profits of over $17 million during the first three years following the acquisition. According to the forecasts, achieving this goal would require an overall price increase of 4% in 2006, 10% in 2007, and 5% in 2008, beyond increases in costs.

25. Amsted pricing data shows that Amsted raised prices substantially following its acquisition of FMI. For new EOCCs, customers who did not have the pricing protection of long-term contracts paid on average approximately 14% more in February 2006 than they did in

November 2005. For reconditioned EOCCs, customers without long-term contracts paid an average increase of approximately 5% during the same time period.

26. Purchasers of new and reconditioned EOCCs in the United States benefitted from the vigorous and aggressive competition between Amsted and FMI through lower prices, higher quality, more innovation, and better service. Without the competitive constraint of head-to-head competition from FMI, Amsted has had and will continue to have the ability to exercise market power by raising prices, lowering product quality, decreasing services, and lessening product innovation.

27. The acquisition by Amsted of FMI has removed a significant competitor in the already highly concentrated new and reconditioned EOCC markets. The resulting substantial increase in concentration and loss of competition has denied EOCC customers the benefits of competition, in violation of Section 7 of the Clayton Act and Section 2 of the Sherman Act.

D. Entry into the Production and Sale of New and Reconditioned EOCCs

28. Entry into the design, manufacture, and sale of new or reconditioned EOCCs will not be timely, likely, or sufficient to counter the anticompetitive effects of the transaction. A new entrant to either market would require certifications and approvals from the Association of American Railroads ("AAR"), including facility certification and design certification for each EOCC model to be manufactured or reconditioned. Additionally, the AAR requires that a new entrant undergo a conditional approval period during which production is monitored and significantly limited.

29. It is essential that a new entrant into either the new or reconditioned EOCC markets have sufficient technical know-how regarding the product in order to design and sell EOCCs. Thus, a new entrant must invest in significant design and engineering expertise in order to create the necessary tooling and intellectual property required to successfully manufacture new or reconditioned EOCCs according to AAR standards and railroad customer requirements.

30. A new entrant into the new or reconditioned EOCC markets also must produce EOCCs in sufficient quantities and with sufficiently consistent quality to assure railroad customers that the new and reconditioned EOCCs will provide the necessary level of cushioning required to protect sensitive cargo. Achieving this quality reputation requires an additional investment in time and money by any new entrant.

31. Although the manufacturing processes for new and reconditioned EOCCs are similar, both require unique inputs that are not readily available in the marketplace. For example, the manufacture of new EOCCs requires the use of patented designs and proprietary molds that are not needed in the reconditioning process. Similarly, the manufacture of reconditioned EOCCs requires the application of certain machining techniques and testing processes that are unique to the EOCC reconditioning market.

32. Therefore, entry by any firm into the new or reconditioned EOCC markets would not be timely, likely, or sufficient to counter anticompetitive price increases imposed by Amsted.

VI.

FIRST CAUSE OF ACTION

(Violation of Section 7 of the Clayton Act)

33. The United States incorporates the allegations of paragraphs 1 through 32 above.

34. On or about December 1, 2005, Amsted acquired FMI and its associated EOCC assets used in the manufacture of new and reconditioned EOCCs. The effect of this acquisition has been substantially to lessen competition in interstate trade and commerce in violation of Section 7 of the Clayton Act.

35. The transaction has had the following effects, among others:

a. competition in the new and reconditioned EOCC markets has been lessened substantially;

b. actual and potential competition between Amsted and FMI in the design, manufacture, and sale of new and reconditioned EOCCs in the United States has been eliminated; and

c. prices for new and reconditioned EOCCs have increased and likely will continue to increase, the quality of EOCCs likely will decline, innovation relating to EOCCs likely will decline, and services currently offered in the EOCC markets have become and will continue to be less favorable to railroad customers.

SECOND CAUSE OF ACTION

(Violation of Section 2 of the Sherman Act)

36. The United States incorporates the allegations of paragraphs 1 through 32 above.

37. On or about December 1, 2005, Amsted willfully created monopoly power by acquiring FMI, its only competitor in the manufacture and sale of new EOCCs. The effect of this acquisition has been to create a monopoly in violation of Section 2 of the Sherman Act.

38. The transaction has had the following effects, among others:

a. the combination created a monopoly for the sale of new EOCCs in the United States;

b. actual and potential competition between Amsted and FMI in the design, manufacture, and sale of new EOCCs in the United States has been eliminated; and

c. prices for new EOCCs have increased and likely will continue to increase, the quality of new EOCCs likely will decline, innovation relating to new EOCCs likely will decline, and services currently offered in the new EOCC market have become and will continue to be less favorable to railroad customers.

VII.

REQUESTED RELIEF

39. The United States requests that this Court:

a. Adjudge and decree the acquisition of FMI and its assets by defendant Amsted to violate Section 7 of the Clayton Act, 15 U.S.C. § 18 and Section 2 of the Sherman Act, 15 U.S.C. § 2;

b. Compel Amsted to divest all FMI EOCC intangible assets, in addition to all tools and patterns used for imparting the shape, form, or finish of EOCC components, and to take any further actions necessary to restore the market to the competitive position that existed prior to the acquisition;

c. Award the United States the cost of this action; and

d. Grant the United States such other and further relief as the case requires and the Court deems just and proper.

Respectfully submitted,

April 18, 2007

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APPENDIX A

HERFINDAHL-HIRSCHMAN INDEX

"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 points 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 antitrust concerns under the *Horizontal Merger Guidelines* issued by the U.S. Department of Justice and the Federal Trade Commission. *See Horizontal Merger Guidelines* § 1.51.