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. THE MANITOWOC COMPANY, INC. 2400 South 44th Street, Manitowoc, Wisconsin 54221, ENODIS plc 175 High Holborn, London, England WC1V 7AA, and ENODIS CORPORATION, 2227 Welbilt Boulevard, New Port Richey, Florida, 34655 Defendants.	CASE NO.: DECK TYPE: Antitrust Case: 1:08-cv-01704 Assigned To : Kennedy, Henry H. Assign. Date : 10/6/2008 Description: Antitrust

COMPLAINT

The United States of America ("United States"), acting under the direction of the Attorney General of the United States, brings this civil antitrust action against defendants The Manitowoc Company, Inc. ("Manitowoc"), Enodis plc, and Enodis Corporation (Enodis plc and Enodis Corporation will hereinafter be collectively referred to as "Enodis") to enjoin Manitowoc's proposed acquisition of Enodis plc and to obtain other relief. The United States complains and alleges as follows:

I. NATURE OF THE ACTION

1. On June 30, 2008, Manitowoc offered to acquire Enodis plc for 328 pence in cash per share, in a transaction valued at $2.7 billion (including assumed debt). The acquisition is structured as a Scheme of Arrangement under the laws of the United Kingdom. The directors of Enodis plc unanimously recommended that its shareholders vote in favor of accepting Manitowoc's offer, and a majority of the shareholders did so.

2. Manitowoc manufactures and sells commercial ice machines in the United States, under the Manitowoc brand, and its ice machines are the most widely sold in the United States. Enodis manufactures and sells commercial ice machines under two brands in the United States, Scotsman and Ice-O-Matic (collectively, the "Enodis brands"); Scotsman and Ice-O-Matic machines are the second and fourth most widely sold, respectively.

3. In the United States, Manitowoc's proposed acquisition of Enodis would reduce the number of manufacturers that sell commercial ice machines producing cubed ice from three to two and would create a company with approximately 70 percent of the U.S. sales of commercial cube ice machines. Unless the proposed acquisition is enjoined, competition for commercial cube ice machines will be substantially reduced. The proposed acquisition likely would result in higher prices, lower quality, and less innovation in the commercial cube ice machine market.

4. The United States brings this action to prevent the proposed acquisition of Enodis by Manitowoc because that acquisition would substantially lessen competition in the development, production, distribution, and sale of commercial cube ice machines in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

II. PARTIES TO THE PROPOSED TRANSACTION

5. Defendant Manitowoc is a Wisconsin corporation with its principal place of business in Manitowoc, Wisconsin. It is a global industrial equipment company that manufacturers commercial ice machines and related equipment, refrigeration equipment, cranes, and ships and other water vessels.

6. In 2007, Manitowoc reported total sales of approximately $4 billion. Manitowoc's sales of commercial ice machines and related equipment in the United States were approximately $152 million in 2007. Sales of commercial ice machines making cube ice accounted for over 70 percent of this total.

7. Enodis is a corporation registered in the United Kingdom and Wales with its principal place of business in London, England. Enodis Corporation, a wholly owned subsidiary of Enodis plc, is a Delaware corporation with its headquarters in New Port Richey, Florida. Through its global food service equipment group, Enodis designs, manufactures, and sells cooking, food storage and preparation equipment, and ice machines and related equipment.

8. Enodis plc's revenues for its 2007 fiscal year were $1.6 billion. North American sales accounted for approximately 70 percent of Enodis plc's total revenue. In its fiscal year 2007, Enodis plc's sales of commercial ice machines and related equipment in the United States were approximately $153 million. Sales of commercial ice machines making cube ice accounted for about 60 percent of this total.

III. JURISDICTION AND VENUE

9. The United States brings this action 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, 15 U.S.C. § 18.

10. Defendants develop, produce, distribute, and sell commercial ice machines and other products in the flow of interstate commerce. Defendants' activities in the development, production, distribution, and sale of these products substantially affect interstate commerce. This Court has subject matter jurisdiction over this action pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

11. Defendants sell commercial ice machines and other products, and have consented to venue and personal jurisdiction, in this judicial district. Venue is proper under 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

IV. TRADE AND COMMERCE

A. The Relevant Product Market

12. Restaurants, convenience stores, hotels, and other businesses need significant volumes of ice. These businesses usually meet their needs by using commercial ice-making machines located at their places of business. These machines make ice by a continuous cycle of condensation and expansion of a refrigerant through a network of tubing. As the refrigerant converts from a compressed liquid state to become a gas, heat is drawn from a component called an evaporator. Water running over the evaporator surface freezes to form ice that is then harvested by processes specific to the type of ice produced by the machine.

13. The type of ice machine purchased by a customer depends on the type and volume of ice needed. Commercial ice machines are designed to produce either hard ice or soft ice. Hard ice melts slowly and has a higher density and less surface area than soft ice. Hard ice is

most often shaped as cubes or dice, half-cubes or half-dice, octagons, or crescent cubes, and is commonly referred to as cube ice. Most customers that serve ice in beverages prefer cube ice because it melts slowly and thus minimizes deterioration in the flavor of the beverage. Soft ice refers to small nuggets or flakes of ice that have a lower density and more surface area than cube ice and, therefore, melt more quickly than cube ice. Soft ice is used in hospitals, which demand a safe, chewable ice for their patients, by grocery stores or other establishments to display seafood, produce, and other perishable food, and for industrial cooling applications. The prices of commercial ice machines producing soft ice are often 15 to 20 percent higher than prices of ice machines that produce comparable quantities of cube ice per day.

14. In response to a small but significant post-acquisition increase in the price of commercial machines producing cube ice, customers would not switch to machines that make soft ice in sufficient numbers so as to make such a price increase unprofitable.

15. Customers vary greatly with respect to their daily needs of cubed ice, and they require machines having an appropriate range of capacity to meet those needs. A significant and distinct segment of cube ice machine customers, including sit-down and fast-food restaurants, bars, and convenience stores, purchase commercial machines capable of producing between approximately 300 pounds to 2,000 pounds of cube ice per day (hereinafter, "commercial cube ice machines").

16. Although customers can purchase units that produce between approximately 50 and 300 pounds of ice per day, these machines are not able to meet the needs of the large majority of commercial cube ice machine customers. Few customers are likely to meet their needs by purchasing two or more smaller machines because it would be cost-prohibitive to do so.

Similarly, large units that produce over 2,000 pounds of ice per day are not substitutes for commercial cube ice machines and are used by customers that need extremely large volumes of ice, such as convention centers, sports arenas, or bagged-ice producers. Because of the attributes of commercial cube ice machines, a small but significant post-acquisition increase in the prices of commercial cube ice machines would not cause customers to switch to other ice machines in sufficient numbers so as to make such a price increase unprofitable.

17. Accordingly, the development, production, distribution, and sale of commercial cube ice machines is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

B. The Relevant Geographic Market

18. Commercial ice machines are complex and break down more frequently than other types of food service equipment, and customers often need quick access to replacement machines, parts, and service. Sales of commercial cube ice machines in the United States by manufacturers are primarily made to distributors that supply equipment dealers and repair companies who sell to end-users. In addition, these distributors typically train service representatives regarding repair and maintenance of the commercial ice machines, as well as manage warranty claims. In order to be a competitive supplier of commercial cube ice machines within the United States, manufacturers must have an established network of local distribution, service, and support.

19. A small but significant increase in the prices of commercial cube ice machines would not cause a sufficient number of customers in the United States to turn to manufacturers of commercial cube ice machines that do not have an established a network of local distribution,

service, and support in the United States. As a result, such manufacturers would not be able to constrain such an increase.

20. Accordingly, the United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Competitive Effects

1. Concentration

21. The market for commercial cube ice machines is highly concentrated. Manitowoc and Enodis are the two largest manufacturers of commercial cube ice machines in the United States. Only one other company has demonstrated the ability to produce commercial cube ice machines of the same quality and with similar features as the Manitowoc and Enodis machines and has an established a network of local distribution, service, and support in the United States.

22. Manitowoc accounts for approximately 40 percent of the sales of commercial cube ice machines in the United States. Enodis accounts for approximately 30 percent of the sales of commercial cube ice machines in the United States.

23. The market for commercial cube ice machines would become substantially more concentrated if Manitowoc were to acquire Enodis. Combined, Manitowoc and Enodis would account for approximately 70 percent of the sales of commercial cube ice machines in the United States. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI"), which is explained in Appendix A, the proposed transaction would increase the HHI in the market for commercial cube ice machines by approximately 2,400 points to a post-acquisition level of approximately 5,800. This is well in excess of levels that raise significant antitrust concerns.

2. The Proposed Transaction Would Harm Competition in the Market for Commercial Cube Ice Machines.

24. The vigorous and aggressive competition between Manitowoc and Enodis in the development, production, distribution, and sale of commercial cube ice machines has benefitted customers. Manitowoc and Enodis compete directly on price, quality, and innovation. Although commercial cube ice machine offerings are differentiated, many commercial cube ice machine customers view the Manitowoc and Scotsman brands as close substitutes for one another.

25. The proposed acquisition would eliminate the competition between Manitowoc and Enodis and reduce the number of significant manufacturers of commercial cube ice machines in the United States from three to two. Post-merger, Manitowoc would profit by unilaterally raising the price (or reducing quality and innovation) of one or more of the brands it would own. Although Manitowoc could lose some sales in that brand or brands as a result of such a price increase (or decline in quality and innovation), many sales would be diverted to one of the other brands under its ownership. Capturing such diverted sales would make a post-merger price increase (or reduction in quality and innovation) profitable, when it would not have been profitable before the merger.

26. The response of other commercial cube ice machines manufacturers in the United States would not be sufficient to constrain a unilateral exercise of market power by Manitowoc after the acquisition because they do not have the incentive or the ability, individually or collectively, to do so.

27. Therefore, the proposed acquisition would enable Manitowoc to exercise market power unilaterally, lessen competition in the development, production, distribution, and sale of

commercial cube ice machines in the United States, and lead to higher prices, lower quality, and less innovation for the ultimate consumers of commercial cube ice machines, in violation of Section 7 of the Clayton Act.

V. ENTRY

28. Successful entry or expansion into the development, production, distribution, and sale of commercial cube ice machines would be difficult, time-consuming, and costly. Firms attempting to enter or expand into the commercial cube ice machine market face a combination of distribution, reputation, and technology-related barriers to entry.

29. Customers need quick access to replacement ice machines and parts, and, as a result, the three significant commercial cube ice machine competitors each have a nationwide network of local distributors. These distributors maintain sizeable inventories at locations across the United States so as meet individual customer demands.

30. Developing a nationwide distribution network would be difficult and time-consuming. Finding good distributors would be difficult because each of the current three commercial cube ice machine competitors has contracted exclusively with a large majority of the sizeable and reputable distributors across the United States, and an existing or potential distributor likely would not agree to distribute a commercial ice machine unless it could be assured of a sufficient volume of sales of machines and parts to make a profit on the inventory and other investments it must make. Further, distributors must build relationships with the food service equipment dealers, air-conditioning and refrigeration repair companies, and others that sell commercial ice machines to end-users. Building such relationships would take a significant amount of time and effort.

31. Reputation or brand recognition is another barrier to entry. Because commercial cube ice machines are so important to customers' operations, customers are reluctant to purchase machines from a company that has not established a reputation for making high-quality, durable machines. Establishing a track record of reliable performance takes years.

32. The technology involved in developing and manufacturing a commercial cube ice machine is a third significant entry barrier. The three current competitors produce—and customers expect and demand—commercial cube ice machines that last seven to ten years, that consistently produce ice that is clear and pure under conditions of varying water chemistries and air and water temperatures, and that meet federal and state energy regulations. Designing and manufacturing commercial cube ice machines that have these characteristics and are comparable in quality to the machines of the three current competitors would take years, even for firms that already produce other types of ice machines.

33. Therefore, entry or expansion by any other firm into the commercial cube ice machine market would not be timely, likely, or sufficient to defeat an anticompetitive price increase in the event that Manitowoc acquires Enodis.

VI. VIOLATIONS ALLEGED

34. The proposed acquisition of Enodis by Manitowoc would substantially lessen competition and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

35. Unless restrained, the transaction will have the following anticompetitive effects, among others:

a. actual and potential competition between Manitowoc and Enodis in the

development, production, distribution, and sale of commercial cube ice machines in the United States will be eliminated;

b. competition generally in the development, production, distribution, and sale of commercial cube ice machines in the United States will be substantially lessened; and

c. prices for commercial cube ice machines in the United States likely will increase, the quality of commercial cube ice machines in the United States likely will decline, and innovation relating to commercial cube ice machines in the United States likely will decline.

VII. REQUEST FOR RELIEF

36. Plaintiff requests that:

a. Manitowoc's proposed acquisition of Enodis be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18;

b. defendants and all persons acting on their behalf be permanently enjoined and restrained from consummating the proposed acquisition or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to combine Manitowoc with the operations of Enodis;

c. plaintiff be awarded its costs for this action; and

d. plaintiff receive such other and further relief as the Court deems just and proper.

Respectfully submitted,

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APPENDIX A

HERFINDAHL-HIRSCHMAN INDEX CALCULATIONS

"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 ($30^2 + 30^2 + 20^2 + 20^2 =$ 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.

Markets in which the HHI is between 1,000 and 1,800 points are considered to be moderately concentrated and those in which the HHI is in excess of 1,800 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.