

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FIRST DIVISION

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 ) Civil Action No. 3-80-596  
 v. )  
 ) ANTI TRUST EQUITABLE  
 BEATRICE FOODS CO., and ) RELIEF SOUGHT  
 FIBERITE CORPORATION, ) (15 U.S.C. §18)  
 )  
 Defendants. ) Filed: October 28, 1980

COMPLAINT

The United States of America, plaintiff herein, 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 action is instituted under Section 15 of the Clayton Act, as amended (15 U.S.C. §25), in order to prevent and restrain violation by the defendants, as hereinafter alleged, of Section 7 of the said Act (15 U.S.C. §18).

2. Each of the defendants transacts business and is found within the District of Minnesota.

II

THE DEFENDANTS

3. Beatrice Foods Co. (hereinafter "Beatrice") is made a defendant herein. It is a corporation organized and

existing under the laws of the State of Delaware and maintains its principal place of business in Chicago, Illinois. Beatrice is a broadly diversified company engaged in food and related service businesses and in various manufacturing and chemical products businesses. It is also engaged in financial and insurance businesses. In fiscal year ending February 29, 1980, Beatrice had total assets of \$3.98 billion, total sales of \$8.29 billion and a net profit of \$290 million.

4. In 1976 Beatrice acquired the LNP Corporation (hereinafter referred to as "LNP") which was originally founded in 1948 as Liquid Nitrogen Processing Corporation. Since 1976, LNP has been operated as the LNP Division of Beatrice. LNP is and has for many years been the leading firm in the United States in the manufacture and sale of custom compounded reinforced thermoplastics molding compounds ("custom compounded reinforced thermoplastics"). LNP maintains its executive offices in Malvern, Pennsylvania and has plants at Thorndale, Pennsylvania; Columbus, Indiana; and Santa Ana, California.

5. Fiberite Corporation (hereinafter referred to as Fiberite) is made a defendant herein. Fiberite maintains its executive offices in Winona, Minnesota and has plants in Winona, Minnesota; Delano, Pennsylvania; and Orange, California. Prior to its acquisition by Beatrice in 1980, Fiberite was controlled by its principal stockholders, Rudolph W. Miller, Benjamin A. Miller and Gladys D. Miller of Winona, Minnesota. It was the leading firm in the United States in the manufacture and sale of custom compounded reinforced thermoset molding compounds.

6. In 1975, Fiberite entered the business of manufacturing and selling custom compounded reinforced thermoplastics, utilizing its sales and technical staffs, its proprietary formulas and process specifications, its laboratory facilities, and, pursuant to Fiberite's direction and control, the compounding equipment, operating personnel and raw materials of an affiliated corporation, Miller Waste Mills, Inc. ("Miller Waste"). Miller Waste could not manufacture reinforced thermoplastics molding compounds apart from Fiberite and has produced such compounds only for Fiberite. Since Fiberite was acquired by Beatrice, Miller Waste (which was not acquired by Beatrice) has continued to operate in the same manner. In fiscal year ending August 31, 1979, Fiberite had total assets of \$28.6 million, net sales of \$59.5 million and net earnings of \$4.9 million.

#### TRADE AND COMMERCE

7. Thermoplastics are plastic resins which may be repeatedly softened and hardened by heating and cooling. Reinforced thermoplastics are thermoplastic resins which have been combined with a reinforcing agent such as glass fiber to improve one or more of the resin's properties. Other ingredients in addition to the reinforcing agent are combined with the thermoplastic resin to further improve its qualities. Reinforced thermoplastics are sold as raw materials to industrial processors for molding and fabrication into a wide range of industrial and consumer products such as automobile windshield wiper gears, electrical terminal blocks, chemical process valves and tennis racket frames.

8. Custom compounded reinforced thermoplastics are reinforced thermoplastics selected, designed and manufactured

to fit the special needs of an individual customer. Custom compounders of reinforced thermoplastics possess special know-how and technical expertise which are used to develop and maintain a broad range of proprietary formulations and recipes to meet customers' needs. They emphasize quick response to customers' orders and can fill small and low-volume orders. Custom compounded reinforced thermoplastics are distinguishable from commodity reinforced thermoplastics molding compounds which are manufactured in high-volume quantities for sale from inventory to meet the aggregate demand of customers. The services rendered by custom compounders are unique and cannot be efficiently provided by the compounders of commodity reinforced thermoplastics.

9. In 1979 approximately 40 million pounds of custom compounded reinforced thermoplastics, having a dollar value of about \$40 million, were manufactured and sold in the United States. Substantial quantities are and have been regularly sold and shipped by the defendants in interstate commerce.

10. There are high barriers to entry into the custom compounded reinforced thermoplastics business and it is highly concentrated. In 1979 the four principal domestic manufacturers and sellers of custom compounded reinforced thermoplastics accounted for about 89% of the market measured in sales dollars. During this period, LNP was the leading manufacturer and seller, accounting for over \$20 million in sales, approximately 50% of this market. Prior to its acquisition by Beatrice, Fiberite was the fourth largest manufacturer and seller, accounting for

about \$3.6 million in sales, approximately 8% of this market, and was recognized by LNP to be a formidable and rapidly-growing competitor.

VIOLATION ALLEGED

11. On or about January 21, 1980, Beatrice acquired all of the stock of Fiberite for approximately \$60 million. Beatrice formed a wholly-owned subsidiary of Beatrice, known as BFC Corporation, and merged it into Fiberite, leaving Fiberite as the surviving corporation. As a result of the merger, Beatrice holds all of the stock of Fiberite.

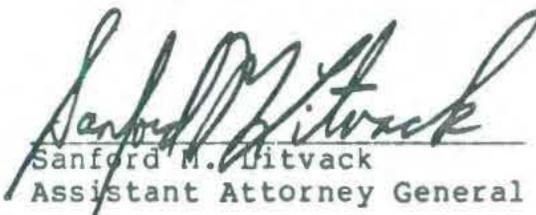
12. The effect of this acquisition may be substantially to lessen competition or tend to create a monopoly in the manufacture and sale of custom compounded reinforced thermoplastics in the United States, in the following ways:

- (a) actual and potential competition between Beatrice and Fiberite in the manufacture and sale of custom compounded reinforced thermoplastics will be permanently eliminated;
- (b) competition generally in the manufacture and sale of custom compounded reinforced thermoplastics may be substantially lessened; and
- (c) concentration in the manufacture and sale of custom compounded reinforced thermoplastics will be substantially increased.

PRAYER

Wherefore the plaintiff prays:

1. That the acquisition of Fiberite by Beatrice be adjudged and deemed to be in violation of Section 7 of the Clayton Act;
2. That Beatrice be required to divest itself of all of the assets and stock of Fiberite;
3. That the plaintiff have such other and further relief as the Court may deem just and proper; and
4. That the plaintiff recover the costs of this suit.

  
Sanford M. Litvack  
Assistant Attorney General

  
Joseph H. Widmar

\_\_\_\_\_  
Joseph T. Maioriello

\_\_\_\_\_  
Charles R. Schwidde

Attorneys,  
U.S. Department of Justice

\_\_\_\_\_  
John W. Poole, Jr.

Attorneys,  
U.S. Department of Justice

\_\_\_\_\_  
United States Attorney  
for the District of  
Minnesota