

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

COOPER INDUSTRIES, INC.,

Defendant.

Civil Action No. 85-0765

Antitrust

Filed: March 6, 1985

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), the United States files this Competitive Impact Statement, relating to the proposed Final Judgment submitted for entry in this case.

I.

Nature and Purpose of the Proceeding

On March 6, 1985, the United States filed a civil antitrust suit alleging that Cooper Industries, Inc., ("Cooper") violated Section 7 of the Clayton Act, 15 U.S.C. § 18, when it acquired the aviation lighting equipment business of Westinghouse Electric Corporation ("Westinghouse") in October 1982. Cooper is a diversified international manufacturing concern headquartered in Houston, Texas. Its primary business activities include the manufacture of

compression and drilling equipment, hardware and tools, and electrical and electronic products, including aviation lighting equipment. Its 1982 sales exceeded \$2.3 billion. Westinghouse is a Pennsylvania corporation engaged primarily in the manufacture, sale, and service of equipment for the generation, transmission, distribution, utilization and control of electricity. Westinghouse exited the aviation lighting equipment business by selling its aviation lighting assets to Cooper.

The complaint alleges that Cooper's acquisition of the Westinghouse aviation lighting equipment business eliminated actual and potential competition in the manufacture and sale of aviation lighting equipment between those firms, increased concentration in the aviation lighting equipment industry, and threatened that industry with a substantial lessening of competition. The complaint asks the Court to find that the acquisition violated § 7 of the Clayton Act and to enjoin Cooper from acquiring any other plant in the aviation lighting equipment industry for ten years without consent of the plaintiff or the Court.

On the same day the complaint was filed, the parties filed a proposed Final Judgment, Stipulation, and this Competitive Impact Statement. Under the Stipulation, the proposed Final Judgment may be entered after compliance with the Antitrust

Procedures and Penalties Act. Entry of the proposed Final Judgment will terminate the action. The Court will retain jurisdiction to interpret, modify, or enforce compliance with the provisions of the proposed Final Judgment.

II.

The Nature of the Alleged Violation

Aviation lighting equipment consists primarily of the lighting systems at airports that guide airplanes on approach and landing, as well as lights that are used on taxiways. The Federal Aviation Administration ("FAA") provides funding for most aviation lighting equipment. To be eligible for use in FAA funded projects, aviation lighting equipment must receive FAA approval. The necessity of obtaining FAA approval lengthens the time required for a firm to enter production and marketing of aviation lighting equipment. FAA requirements are also a significant factor in eliminating from the United States market most aviation lighting equipment produced abroad.

Aviation lighting equipment is generally sold to airports as part of a complete lighting system. To compete fully for sales of these systems, a manufacturer must offer a relatively broad range of products. Prior to the acquisition described in the complaint, Cooper, Westinghouse, and one other firm provided the primary competition in lighting systems. Other firms in the industry concentrated on market "niches."

The manufacture and sale of aviation lighting equipment in the United States is a highly concentrated industry. Prior to the acquisition that is the subject of this suit, the four largest domestic firms accounted for at least 72% of sales, the eight largest accounted for approximately 87% of sales, and the HHI (the Herfindahl-Hirschman Index, a measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers) was approximately 3107.

Cooper is by far the dominant firm in the United States market. Prior to the acquisition, its Crouse-Hinds subsidiary had a market share conservatively estimated as 54% of sales of all domestic firms. Prior to the acquisition, Westinghouse had a market share of approximately 7%. On October 1, 1982, Cooper purchased the assets that Westinghouse had used in its aviation lighting equipment business. This transaction substantially increased industry concentration, raising the HHI 756 points to 3863.

The probable effect of an acquisition causing an increase of this magnitude in the level of concentration in the manufacture and sale of aviation lighting equipment in the United States is a substantial lessening of competition in violation of Section 7 of the Clayton Act.

III.

Explanation of the Proposed Final Judgment

The proposed Final Judgment provides all the substantive relief the complaint requests. It provides that for a period of ten years Cooper shall not acquire, directly or indirectly, any plant which produced aviation lighting equipment which was sold in the United States within two years prior to the proposed acquisition, without first obtaining the permission of the plaintiff or the Court. Cooper must notify plaintiff of any such proposed acquisition at least 45 days before its closing date. Plaintiff must then notify Cooper of any objection it has to the proposed transaction within 30 days. If Cooper wishes to proceed with the transaction in the face of plaintiff's objection, it can only do so if it shows the Court that the transaction will not substantially lessen competition in any line of commerce in any section of the country.

IV.

Competitive Effect of the Proposed Final Judgment

The United States' aviation lighting equipment market is relatively small. In 1982, the domestic industry had approximately \$48 million in sales. Some firms which are important members of this industry have assets and sales that, compared to other industries, are not large. Acquisitions having a significant adverse effect on concentration in this

market, including the subject of this action, can therefore involve dollar amounts that do not require reporting under the premerger reporting program created by Section 7A of the Clayton Act, 15 U.S.C. § 18(a). Thus, anticompetitive acquisitions may occur without prior notice to the government.

Cooper has grown in aviation lighting in part through acquisitions. In 1978 it acquired a competitor, and in 1982 it acquired the Westinghouse business. Without the prohibition imposed by the proposed Final Judgment, we believe it likely that Cooper would propose or enter additional acquisitions which could eliminate additional competitors in this marketplace. This could occur with no advance notice to the government. The proposed Final Judgment eliminates this possibility.

V.

Remedies Available to Private Parties

Entry of the proposed Final Judgment will have no effect on the rights of persons who may have been injured by the alleged violation. Private plaintiffs may sue for any remedy they deem appropriate. However, pursuant to Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), this judgment may not be used as prima facie evidence in private litigation.

VI.

Procedures Available For Modification of the Proposed Final Judgment

For a period of 60 days following the filing of the proposed Final Judgment and its publication in newspapers and the Federal Register, interested persons may submit written comments concerning the proposed judgment to Alan L. Marx, Chief, General Litigation Section, Antitrust Division, United States Department of Justice, Washington, D.C. 20530. These comments and the government's response will be filed with the Court and published in the Federal Register. The government will carefully consider all comments to determine if there is any reason for withdrawing its consent to the proposed judgment, which it may do at any time before the decree is entered by the Court. The Court will retain jurisdiction over the judgment following its entry so as to permit any of the parties to apply for orders modifying or enforcing the decree.

VII.

Alternatives to the Proposed Final Judgment

The primary alternative relief considered was divestiture of the assets acquired when Cooper acquired Westinghouse's aviation lighting business. However, the plant in which Westinghouse manufactured the equipment was leased, and Cooper did not renew the lease. Cooper sold part of the manufacturing

equipment it acquired from Westinghouse, and moved part of it to existing Cooper facilities. We concluded that an asset divestiture was therefore not feasible, and that if further anticompetitive acquisitions by Cooper were prevented, normal market forces would eventually restore full competition in the market.

VIII.

Determinative Documents and Materials

There are no materials or documents that the United States considered determinative in formulating the proposed Final Judgment. Accordingly, none are being filed with this Competitive Impact Statement.

Respectfully submitted,

Dated:

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