

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,  
Plaintiff,

v.

S.p.A. OFFICINE MACCAFERRI;  
MACCAFERRI GABIONS  
MANUFACTURING COMPANY, INC.;  
and RIVER AND SEA GABIONS  
(LONDON) LIMITED,

Defendants.

Civil Action No.

B-86-612

FILED ENTERED  
LODGED RECEIVED

FEB 24 1986

AT BALTIMORE  
CLERK U.S. DISTRICT COURT  
DISTRICT OF MARYLAND

DEPUTY

COMPLAINT FOR EQUITABLE RELIEF

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief against the above-named defendants 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 the violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act, as amended, 15 U.S.C. §18.

2. Maccaferri Gabions Manufacturing Company, Inc. maintains offices, transacts business and is found within the District of Maryland.

## II

### DEFINITIONS

3. "HHI" means 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. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 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. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

4. "Gabions" means rectangular, wire mesh containers which, when filled with hand-size stones and wired together, form large, flexible and permeable structures that are used in river training, flood control, landscaping and erosion control, primarily in municipal, state and federal public works projects.

5. "Terra Aqua" means Terra Aqua Inc., a corporation organized and existing under the laws of the State of Delaware and maintaining its principal place of business in Reno, Nevada. River and Sea Gabions (London) Limited acquired all the capital stock of Terra Aqua on February 15, 1983. Prior to its acquisition by River and Sea Gabions (London) Limited,

Terra Aqua operated as a division of Bekaert Steel Wire Corporation and was engaged in the manufacture and sale of gabions. At the time of the acquisition, Terra Aqua and Maccaferri Gabions Manufacturing Company, Inc. were the only two domestic manufacturers of gabions.

### III

#### DEFENDANTS

6. S.p.A. Officine Maccaferri (hereinafter "Officine") is made a defendant herein. Officine is an Italian corporation that has its principal place of business located in Bologna, Italy.

7. Maccaferri Gabions Manufacturing Company, Inc. (hereinafter "MGMC") is made a defendant herein. MGMC is a corporation organized and existing under the laws of the State of Maryland, and has its principal place of business and manufactures gabions in Williamsport, Maryland. Prior to the violation alleged herein, MGMC was one of only two domestic manufacturers of gabions. MGMC is controlled by Officine.

8. River and Sea Gabions (London) Limited (hereinafter "R&S") is made a defendant herein. R&S is a British corporation that has its principal place of business in London, England. R&S is controlled by Officine.

### IV

#### TRADE AND COMMERCE

9. Gabions are fabricated from a triple-twisted hexagonal mesh of heavily galvanized wire. Gabions are also available with a polyvinyl chloride (hereinafter "PVC") coating that

protects the wire when gabions are used in corrosive conditions, such as salt water. The mesh is made from coils of wire that are fed into a specially designed machine which weaves the wire. Compartments of equal size are formed at the manufacturing stage by the insertion of diaphragms, or partitions, which are made of the same mesh as the gabions. These make assembly and erection easier and help reinforce the gabion structure by assuring that the fill remains evenly distributed.

10. Gabions are shipped folded flat and packed together in bundles. At the job site they are opened and manually assembled by wiring the corners together and attaching the diaphragms to the side panels. After the gabions are assembled and in place on the job site, they are filled, usually mechanically, with stones of a size slightly larger than that of the mesh. After filling, the lid of the gabion is closed and wired along all edges and to the top edge of the diaphragms. Adjoining gabions are connected with lacing wire along their adjacent vertical edges; empty gabions, stacked on filled gabions, are themselves filled and then laced to the bottom gabions at the front, side and back, creating a monolithic structure.

11. Gabions are available in different sizes to suit various applications and conditions of terrain. There are nine sizes of gabions measured in "linear" units, from 6 feet to 12 feet in length, 1 foot to 3 feet in depth, and all 3 feet wide. The capacity of gabions ranges from .66 to 4 cubic

yards, and all have 2 to 4 compartments. There are nine comparable metric sizes which are slightly larger than their linear counterparts. Each size gabion, both linear and metric, can be manufactured as a galvanized unit or with an additional PVC coating.

12. Gabion structures are well suited to soil conservation and ecology projects. Their applications fall within three broad categories: river training and flood control; consolidation and protection from erosion on such projects as roads, railways, airports and parks; and shore and coastal protection. Gabions have unique uses and characteristics, including flexibility, permeability, durability, versatility and economy, which differentiate them from other methods of erosion control. Other products are not competitive substitutes for gabions. The manufacture and sale of gabions comprises a relevant product market for antitrust purposes.

13. MGMC and Terra Aqua were direct competitors in the manufacture and sale of gabions in the United States. Prior to the acquisition of Terra Aqua by R&S on or about February 15, 1983, MGMC, from its manufacturing plant in Williamsport, Maryland and Terra Aqua, from its manufacturing plant in Reno, Nevada, shipped gabions to locations throughout the United States. The United States constitutes a relevant geographic market for the sale of gabions.

14. The gabion market in the United States is highly concentrated. Until February 1983, MGMC had approximately 60 percent of the market and Terra Aqua had approximately 40 percent. As a result of the acquisition of Terra Aqua by R&S, Terra Aqua and MGMC are under the common control of Officine. Officine, through its subsidiaries, is the only producer of gabions in the United States and has a monopoly. The HHI currently approaches 10,000.

15. Few gabions are imported into the United States market. The most severe disadvantage to importers of gabions arises from the fact that the overwhelming majority of gabion sales are made directly to federal, state or municipal government agencies or to general contractors for inclusion in public works projects. Such projects are usually covered by some form of "Buy American" provision which precludes, except under exceptional circumstances, the use of foreign gabions. Foreign gabion producers, therefore, are limited in their ability to respond effectively to market conditions in the United States, and a small but significant and nontransitory increase in gabion prices would not cause a significant shift by domestic users to foreign gabions.

16. Defendants and Terra Aqua are each engaged in interstate commerce and their activities, with respect to gabions, are in the flow of, and substantially affect, interstate commerce.

VIOLATION ALLEGED

17. On or about February 15, 1983, defendants, through R&S, purchased all of the outstanding shares of capital stock of Terra Aqua for \$2.48 million in cash and notes.

18. The effect of the acquisition of Terra Aqua by R&S may be substantially to lessen competition or to tend to create a monopoly in the aforesaid trade and commerce in violation of Section 7 of the Clayton Act in the following ways, among others:

(a) Actual competition and the potential for increased competition between Terra Aqua and MGMC in the manufacture and sale of gabions in the United States has been eliminated; and

(b) Competition generally in the manufacture and sale of gabions in the United States has been substantially lessened.

PRAYER

WHEREFORE, plaintiff prays:

1. That the acquisition of Terra Aqua by R&S be adjudged in violation of Section 7 of the Clayton Act.

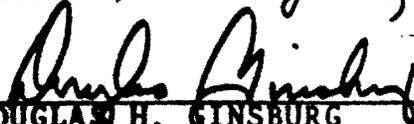
2. That the defendants be ordered to permanently divest Terra Aqua.

3. That defendants and all persons acting on their behalf be permanently enjoined from carrying out any future acquisition of Terra Aqua.

4. That the plaintiff have such other and further relief as the Court may deem just and proper.

5. That the plaintiff recover the costs of this action.

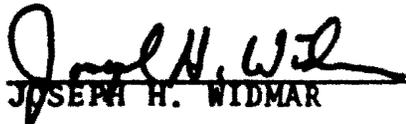
Dated: February 24, 1986

  
DOUGLAS H. GINSBURG  
Assistant Attorney General

  
JOHN F. GREANEY

  
MARK LEDDY

  
J. ROBERT KRAMER FI

  
JOSEPH H. WIDMAR

  
PHILLIP R. MALONE

  
JOHN W. CLARK

Attorneys  
Department of Justice  
Antitrust Division

Attorneys  
Department of Justice  
10th Street & Pennsylvania  
Avenues, N.W.  
Washington, D.C. 20530  
Telephone: (202) 724-7469