



3. Rheem Manufacturing Company transacts business within the Western District of Michigan.

4. Rheem Manufacturing Company proposes to acquire all of the outstanding capital stock of Bradford-White Corporation. The acquisition is now scheduled to be consummated on or soon after January 30, 1987. The United States alleges that this proposed acquisition will violate Section 7 of the Clayton Act.

#### II. DEFINITIONS

5. "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 squared + 30 squared + 20 squared + 20 squared = 2600). The HHI, which takes into account the relative size and distribution of the firms in a market, ranges from virtually zero to 10,000. The index approaches zero when a market is occupied by a large number of firms of relatively equal size. The index increases as the number of firms in the market decreases and as the disparity in size between the leading firms and the remaining firms increases.

#### III. DEFENDANTS

6. Rheem Manufacturing Company ("Rheem") is made a defendant herein. Rheem is a corporation organized and existing under the laws of the State of Delaware. It maintains its principal offices in New York, New York. Rheem

manufactures water heaters, air conditioners, ultra low temperature freezers and steel and plastic shipping containers. Rheem's United States water heater division operates manufacturing plants in Chicago, Illinois and Montgomery, Alabama. In 1985, Rheem's total revenues were \$834.7 million. Of these revenues, Rheem derived \$198.8 million from its United States water heater division.

7. Manufacturing Acquisition Associates, L.P. ("MAA") is made a defendant herein. MAA is a Delaware limited partnership and indirectly controls Rheem.

8. Bradford-White Corporation ("Bradford-White") is made a defendant herein. Bradford-White is a corporation organized and existing under the laws of the State of Delaware. It maintains its principal offices in Philadelphia, Pennsylvania. Bradford-White is a privately held company principally engaged in the manufacture and sale of water heaters. Its manufacturing facility is located in Middleville, Michigan. In 1985, Bradford-White's total revenues were about \$93.6 million.

#### IV. TRADE AND COMMERCE

9. The vast majority of American homes have their hot water needs supplied by water heaters that heat and store water at a thermostatically controlled temperature for delivery on demand (hereinafter "residential water heaters"). A residential water heater consists primarily of a cylindrical storage tank, a heating element and a thermostatic control. The storage tank

is insulated and covered by a thin outer jacket. Residential water heaters predominately use gas or electricity as the energy source. Water is heated by a gas flame beneath the storage tank or by electric heating coils inside the tank. Gas and electric residential water heaters have energy inputs of under 75,000 Btu per hour or 12 kilowatts, respectively. The vast majority of storage tanks are made of steel and are lined with porcelain enamel to inhibit corrosion.

10. Residential water heaters are mass produced on automated assembly lines in a variety of sizes. The most popular sizes are the 30 and 40 gallon gas and the 40 and 52 gallon electric models. Residential water heaters are sold principally to plumbing wholesalers, hardware wholesalers and large retail stores. They are also sold to utilities, farm cooperatives and to manufacturers of mobile and other factory built homes. Plumbing wholesalers resell to plumbing contractors who provide plumbing services to the consuming public, including the installation of residential heaters. Hardware wholesalers resell to retail hardware stores which sell directly to consumers. Large retail chains which sell water heaters directly to consumers typically purchase water heaters directly from manufacturers. Retail stores either resell water heaters under their own brand names or under the brand names of the manufacturer.

11. There is no reasonable substitute to which a significant number of customers would turn in response to a small but significant and nontransitory price increase in residential water heaters.

12. Residential water heaters constitute a line of commerce and a relevant product market for antitrust purposes (hereinafter "residential water heater market"). In 1985, total sales of residential water heaters were over \$700 million.

13. The relevant geographic market for antitrust purposes for residential water heaters is the United States. Plants throughout the United States and one in Juarez, Mexico, produce residential water heaters for sale in the United States. Other than production from Juarez, Mexico, there are no significant imports of residential water heaters into the United States.

14. Both Rheem and Bradford-White make and market residential water heaters in the United States. Rheem, Bradford-White and three other firms, State Industries, Inc.; Mor-Flo Industries, Inc.; and A.O. Smith Corporation account for over 90 percent of production and capacity. The residential water heater market is highly concentrated and would become substantially more concentrated as a result of the violation alleged below.

15. Rheem and Bradford-White are, respectively, the third and the fifth largest producers of residential water heaters in the United States. The combined firm will be the largest domestic producer of residential water heaters with a market share of about 29 percent. Based on 1985 sales, Rheem and Bradford-White's market shares were about 21 percent and 8 percent, respectively. The proposed combination of the two firms would increase the HHI by over 300 to a total of about 2200.

16. Entry into the manufacture and sale of residential water heaters is difficult. Among the reasons that entry is difficult are the time and expense of entry, the maturity of and the existence of excess capacity in the residential water heater market, the ability of existing competitors to price discriminate, the existence of longstanding customer relationships and the need to obtain effective distribution and establish a reputation for reliability.

17. Rheem and Bradford-White regularly purchase substantial quantities of materials used in the production of residential water heaters in interstate commerce and sell substantial quantities of residential water heaters in interstate commerce. Rheem and Bradford-White each are engaged in interstate commerce, and their activities are in the flow of, and substantially affect, interstate commerce.

## V. VIOLATION ALLEGED

18. Rheem, Bradford-White and the owners of not less than 95 percent of the outstanding shares of Bradford-White have reached an understanding that Rheem will purchase all of the common and preferred stock of Bradford-White for an aggregate cash purchase price of approximately \$30 million.

19. Following the acquisition of Bradford-White, Rheem plans to close Bradford-White's plant in Middleville, Michigan. Rheem currently intends to maintain the Bradford-White name and distribution system.

20. The effect of the acquisition of Bradford-White by Rheem may be substantially to lessen competition in the manufacture and sale of residential water heaters in the United States in violation of Section 7 of the Clayton Act, in the following ways, among others:

- a. actual and potential competition between Rheem and Bradford-White will be eliminated; and
- b. competition generally in the manufacture and sale of residential water heaters may be substantially lessened.

PRAYER

WHEREFORE, plaintiff prays:

1. That pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, the Court issue a summons commanding MAA to appear in these proceedings and bring MAA within the jurisdiction of this Court for purposes of this litigation.

2. That pending final adjudication of the merits of this complaint, a preliminary injunction be issued against the defendants preventing and restraining each of them and all persons acting on their behalf from taking any action, either directly or indirectly, in furtherance of the proposed acquisition of Bradford-White;

3. That the proposed acquisition of Bradford-White by Rheem be adjudged to be in violation of Section 7 of the Clayton Act;

4. That the defendants and all persons acting on their behalf be permanently enjoined from carrying out any agreement, understanding or plan, the effect of which would be to combine the businesses of Rheem and Bradford-White;



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

6. That plaintiff recover the costs of this action.

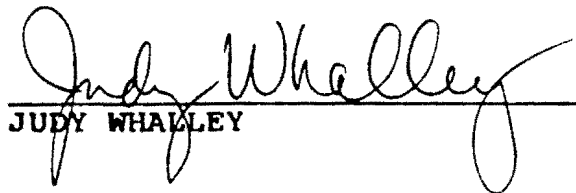
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