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United States v. Combustion Engineering, Inc.

1971 Trade Cases ¶73,648. U.S. District Court, D. Connecticut. Civil Action No. 13998. Entered September 8, 1971. Case No. 2128, Antitrust Division, Department of Justice

Clayton Act

Acquisitions — Industrial Boilers — Divestiture — Continuous Offers—After-acquired Assets—Consent Decree.—A manufacturer of industrial boilers was required by a consent decree to seek to divest itself of all the assets of another boiler manufacturer which it acquired. The firm must make continuous bona fide efforts, from the effective date of the judgment to September 1, 1972, to sell all of the acquired assets, together with any replacements and improvements, to a purchaser approved by the government that will undertake to continue producing industrial boilers. The assets and improvements added by the firm shall include such facilities, machinery, equipment, inventories, trade names, patents, know-how, licenses, customer lists and other tangible and intangible assets as shall be necessary to produce, annually, industrial boiler products having a capacity in excess of 7,000,000 pounds of steam per hour. In addition, the firm would be prohibited for ten years from acquiring any assets from, or any interest in, any company engaged in the manufacture or sale of industrial boilers in the United States.

Acquisitions—Industrial Boilers—Divestiture—Sales on a Non-discriminatory Basis.—A manufacturer of industrial boilers, required by a consent decree to divest itself of all the assets of another boiler manufacturer which it acquired, was required to offer to sell to the eligible purchaser, at reasonably prevailing prices, for a period of one year from the date of sale, such boiler components and auxiliaries manufactured by the firm as the purchaser may reasonably request for the production of industrial boiler products.

Acquisitions—Industrial Boilers—Divestiture—Employment Aid.—A manufacturer of industrial boilers, required by a consent decree to divest itself of all the assets of another boiler manufacturer which it acquired, was required to reasonably cooperate with the eligible purchaser in the employment of the firm's employees. These employees include (1) all employees engaged in the local operation and management of the divested assets, and (2) such employees as the purchaser may reasonably require to perform the production, sales, marketing, service, design, engineering, accounting, installation, purchasing, estimating, traffic, overall managerial and other functions for the industrial boiler products produced with the divested assets. The firm must release from any employment contract any person or persons who, within a reasonable time after consummation of the divestiture, notify the firm of their desire to accept employment with the purchaser.

For plaintiff: Richard W. McLaren, Asst. Atty. Gen., Baddia J. Rashid, Bernard M. Hollander, Norman H. Seidler, Bernard A. L. Friedman, Joan N. Simon, Peter W. Oldershaw and Elliott H. Moyer, Attys., Dept. of Justice.

For defendant: Rosen-man Colin Kaye Petschek Freund & Emil, New York, N. Y., and Louis M. Winer, of Tyler, Cooper, Grant, Bowerman & Keefe, New Haven, Conn.

Final Judgment

BLUMENFELD, D. J.: Plaintiff, the United States of America, having filed its complaint herein on September 1, 1970, and defendant, Combustion Engineering, Inc., having filed its answer denying the substantive allegations of the complaint; and the parties by their respective attorneys having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or any admission by any party in respect to any issue:

Now, Therefore, before the taking of any testimony, without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto it is hereby

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

This court has jurisdiction of the subject matter hereof and of the parties consenting hereto. The complaint states claims upon which relief may be granted against defendant under Section 7 of the Act of Congress of October 15, 1914 (15 U. S. C. § 18), commonly known as the Clayton Act, as amended.

II

[*Applicability*]

The provisions of this Final Judgment shall apply to the defendant and to its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with the defendant who shall have received actual notice of this Final Judgment by personal service or otherwise. None of the provisions of this Final Judgment shall apply to any person or persons who acquires any of the assets disposed of pursuant to this Final Judgment.

III

[*Offers to Sell*]

(A) Defendant is ordered and directed, for the period from the effective date of this Final Judgment to September 1, 1972, to make continuous bona fide efforts to sell and consummate a sale of all of the assets acquired from the Wickes Corporation in 1966, together with any replacements and improvements added by defendant to those assets, hereinafter referred to as the "Wickes plant", and the additional items listed below in subsections (C) through (E) of this Section III, to a purchaser undertaking to operate said Wickes plant for the manufacture of industrial boilers and approved by plaintiff, hereinafter referred to as an "eligible purchaser".

(B) The assets acquired from the Wickes Corporation and improvements added by defendant shall include, without limitation, such facilities, machinery, equipment, inventories, tooling, trade names, patents, patent applications, know-how, licenses, drawings, blueprints, customer lists and other tangible and intangible assets as shall be necessary for the Wickes plant to produce, annually, industrial boiler products having a capacity in excess of 7,000,000 pounds of steam per hour.

(C) Defendant shall offer to sell to the eligible purchaser, at reasonable prevailing prices therefor, for a period of one year from the date of sale, such boiler components and auxiliaries (drums, however, if in short supply, may be allocated on a fair and non-discriminatory basis) manufactured by defendant as the purchaser may reasonably request for the production of industrial boiler products at the Wickes plant.

(D) Defendant shall reasonably cooperate with the eligible purchaser of the Wickes plant in the employment of the following of defendant's employees:

(1) all employees engaged in the local operation and management of the Wickes plant; and

(2) such employees, whether located in the field or at defendant's Windsor, Connecticut offices, as the purchaser may reasonably require to perform the production, sales, marketing, service, design, engineering, accounting, installation, purchasing, estimating, traffic, overall managerial and other functions for the industrial boiler products produced at the Wickes plant. To accomplish this subsection III (D), defendant shall take necessary steps to inform persons within its organization to apprise them of the opportunity for employment with the purchaser. Defendant shall release from any employment contract any person or persons who within a reasonable time, after the consummation of the divestiture, notify defendant of their desire to accept such employment.

(E) Defendant shall transfer to the eligible purchaser existing contracts, orders and work in progress (wherever scheduled to be performed) relating to industrial boilers normally made at the Wickes plant, upon such reasonable terms as they may agree; and shall supply to such purchaser all information as to (a) such contracts, orders and work in progress and (b) then current requests for offers or bids to sell such industrial boilers.

(F) In accomplishing the divestiture ordered by subsection III (A), defendant shall make known the availability for sale of the Wickes plant by ordinary and usual means, including advertising in financial publications of general circulation and in trade publications. Defendant shall furnish to all bona fide prospective eligible purchasers all necessary information, including existing current financial statements regarding the Wickes plant and shall permit such prospective eligible purchasers to make such inspection as may be reasonably necessary.

(G) Pending any sale or transfer of the Wickes plant pursuant to the terms of this Final Judgment, defendant shall continue the normal operations of the Wickes plant, provided however, that defendant shall not be required to bid for and contract to produce industrial boilers for manufacture in the Wickes plant with delivery dates beyond September 1, 1972.

IV

[*Extension of Time*]

If defendant has not divested itself of the Wickes plant on or before August 1, 1972, upon application and showing to this Court by plaintiff that an eligible purchaser has expressed a bona fide interest in the purchase of the Wickes plant and that a reasonable expectation exists that a sale may be made to such purchaser, the provisions of Section III hereof shall be extended for a reasonable additional period of time to permit negotiations with such eligible purchaser to proceed to conclusion.

V

[*Monthly Reports*]

Following the entry of this Final Judgment, and continuing until completion of the divestiture within the time specified by Section III above, defendant shall submit monthly reports to the Assistant Attorney General in charge of the Antitrust Division outlining in detail the bona fide efforts made by it to comply with the provisions of Section III above. The first such report shall be rendered within thirty (30) days after the date of entry of this Final Judgment.

VI

[*Future Acquisitions*]

Defendant is enjoined and restrained for a period of ten (10) years from the date of this Final Judgment from acquiring all of the assets, or any part of the assets used in the manufacture and sale of industrial boilers of, or all or any part of the stock of, any individual, partnership, firm, corporation, association or other business or legal entity engaged in the manufacture and sale of industrial boilers in the United States, or otherwise entering into any relationship of common ownership or control with any such manufacturer or seller.

VII

[*Compliance & Inspection*]

For the purpose of securing compliance with this Final Judgment, and for no other purpose:

(A) Any duly authorized representative or representatives of the Department of Justice shall, upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, upon reasonable notice to the defendant made to its principal office, be permitted subject to any legally recognized privilege:

(1) Access, during the office hours of said defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession, custody, or under the control of said defendant relating to any of the matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview the officers and employees of defendant, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be requested.

No information obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VIII

[*Jurisdiction Retained*]

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment or for the modification of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.