

(“Charter”) entered into an Asset Purchase and Liability Assumption Agreement, under which Harsco would acquire the switch and crossing and transit grinding equipment and the switch and crossing services business of Pandrol Jackson Inc. and Pandrol Jackson Limited (collectively “Pandrol”), both of which are indirectly owned by Charter. The United States seeks to enjoin this transaction because it would combine the only two manufacturers of switch and crossing and transit grinders and the only two providers of railroad switch and crossing grinding services in the United States.

2. If Harsco acquires the switch and crossing and transit grinding equipment and switch and crossing grinding services business of Pandrol, the resulting monopoly would likely raise prices and lower quality of service to transit systems and railroads in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

I. JURISDICTION AND VENUE

3. This Complaint is filed under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

4. Charter, through Pandrol, and Harsco manufacture and sell switch and crossing and transit grinding equipment and sell switch and crossing grinding services in the flow of interstate commerce. Defendants’ activities in manufacturing and selling switch and crossing and transit grinding equipment and selling switch and crossing grinding services also substantially affect interstate commerce. This Court has jurisdiction over the subject matter of this action and the parties pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22 and 28 U.S.C. §§ 1331, 1337(a), and 1345.

5. Defendants transact business within the District of Columbia. Venue is proper in this District pursuant to 15 U.S.C. § 22 and 28 U.S.C. § 1391(c) and § 1391(d).

II. THE DEFENDANTS

A. Harsco

6. Harsco is a corporation organized and existing under the laws of the state of Delaware, with its corporate headquarters and principal place of business in Camp Hill, Pennsylvania. Harsco had revenues of approximately \$1.7 billion in 1998.

7. Harsco manufactures switch and crossing and transit grinders in Fairmont, MN. During 1998, Harsco had revenues of about \$3.2 million from the sale of switch and crossing and transit grinding services and equipment in the United States and approximately \$3.7 million in North American sales.

B. Charter and Pandrol

8. Charter is a corporation organized and existing under the laws of the United Kingdom, with its corporate headquarters and principal place of business in London, United Kingdom. Charter had revenues of about \$2 billion in 1998. In 1990, Pandrol North America, then controlled by Charter, bought a controlling interest in the Jackson Jordan Company and merged it to create Pandrol Jackson Inc.

9. Pandrol Jackson Limited maintains its corporate headquarters and principal place of business in Surrey, United Kingdom.

10. Pandrol Jackson Inc. is a Delaware corporation with its corporate headquarters and principal place of business in Ludington, Michigan.

11. Pandrol manufactures rail and transit grinders at its plant in Ludington, Michigan. From some time in 1997 to August 1998, switch and crossing and transit grinders were also assembled in Manistee, MI. Rail and transit grinders are also serviced and remanufactured at the company's facility in Syracuse, NY.

12. Pandrol had approximately \$101 million in sales during 1998, including about \$4.3 million from sales of switch and crossing and transit grinding services and equipment in the United States and approximately \$5.7 million in North American sales.

III. TRADE AND COMMERCE

A. The Nature of the Industry

13. Over time, the rubbing of train wheels on the tracks of railroads and transit systems deforms the profile of the rail. These deformations, if allowed to continue, cause the rail to wear out prematurely. Switch and crossing grinders are designed to restore the rail used in railroad track switches and railroad track crossings to its original shape, thereby prolonging its useful life. Transit grinders are designed to restore rail used in transit systems to its original shape, thereby prolonging its useful life.

14. Harsco and Pandrol are the only manufacturers of switch and crossing and transit grinders and the only providers of switch and crossing grinding services in North America. Harsco and Pandrol typically build and operate these grinders, contracting grinding services to the railroads. Transit systems typically purchase grinders from the manufacturers and do their own grinding, although transit systems may also occasionally purchase grinding services from Harsco or Pandrol.

B. The Relevant Market is the Manufacture and Sale of Switch and Crossing and Transit Grinders and the Provision of Switch and Crossing Grinding Services in North America

1. The Relevant Product Market

15. There are no other products or services that are practical and cost-effective substitutes for switch and crossing and transit grinding.

16. Like switch and crossing and transit grinders, production grinders also restore rail track profiles that deform through wear. The use of production rail grinders is not a functional substitute for switch and crossing and transit grinders. Unlike switch and crossing and transit grinders, production rail grinders are designed to alter the profiles of large, relatively straight sections of railroad track.

17. Customers desiring to purchase switch and crossing and transit grinding equipment or services would not turn to any alternative product or service in response to a small but significant increase in the price of switch and crossing and transit grinding equipment or services.

18. The production and sale of switch and crossing and transit grinders and the provision of switch and crossing grinding services are lines of commerce and relevant product markets within the meaning of Section 7 of the Clayton Act.

2. The Relevant Geographic Market

19. Manufacturers of switch and crossing and transit grinders and the providers of switch and crossing grinding services compete with one another throughout North America. No imports of switch and crossing and transit grinders are made into North America and switch and crossing grinding services are provided throughout North America only by firms that

manufacture such grinders in the United States. North America is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. The Proposed Acquisition Creates a Monopoly in North America for Switch and Crossing and Transit Grinding Equipment and for Switch and Crossing Grinding Services That Will Harm Competition

20. The proposed acquisition will create a monopoly in North America for switch and crossing and transit grinding equipment and for switch and crossing grinding services.

21. A combination of Pandrol and Harsco would leave customers without the ability to seek competitive bids for switch and crossing and transit grinding equipment and for switch and crossing grinding services in North America.

22. The creation of a monopoly in the provision of switch and crossing and transit grinding equipment and for switch and crossing grinding services is likely to lead to higher prices and lower quality for these products and services in North America.

23. New entry into the business of manufacturing and selling switch and crossing and transit grinding equipment and providing switch and crossing grinding services will not be timely, likely or sufficient to undermine a noncompetitive price increase.

IV. THE PROPOSED ACQUISITION VIOLATES SECTION 7 OF THE CLAYTON ACT

24. The proposed acquisition will likely lessen competition substantially and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

25. Unless restrained, the transaction would have the following effects, among others:

- a. competition generally in switch and crossing and transit grinding

equipment and switch and crossing grinding services in North America would be substantially lessened;

- b. actual and potential competition between Harsco and Pandrol in the manufacture and sale of switch and crossing and transit grinding equipment and switch and crossing grinding services in North America would be eliminated; and
- c. the prices for switch and crossing and transit grinding equipment and switch and crossing grinding services would likely increase, and the quality of such equipment and services would likely decline.

V. REQUESTED RELIEF

- 26. The plaintiff requests that this Court:
 - a. adjudicate that defendant Harsco's proposed acquisition of the switch and crossing and transit grinding equipment and switch and crossing grinding service business of Pandrol would violate Section 7 of the Clayton Act;
 - b. permanently enjoin defendant Harsco from carrying out the Agreement of January 30, 1998 or from acquiring any part of the switch and crossing and transit grinding equipment and switch and crossing grinding service business of Pandrol;

- c. award the United States the costs of this action; and
- d. award such other relief as is proper.

Dated: October 14, 1999

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

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