

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

UNITED STATES OF AMERICA,
U.S. Department of Justice
Antitrust Division
1401 H Street, NW
Suite 3000
Washington, DC 20530,

Plaintiff,

v.

THE MANITOWOC COMPANY, INC.,
500 South 16th Street
Manitowoc, WI 54221;

GROVE INVESTORS, INC.,
1565 Buchanan Trail East
Shady Grove, PA 17256-0021; and

NATIONAL CRANE CORP.,
11200 North 148th Street
Waverly, NE 68462-9689,

Defendants.

Case No. 02CV0159

JUDGE: Royce Lamberth

DECK TYPE: ANTITRUST

DATE: July 31, 2002

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain equitable relief against defendants, and alleges as follows:

1. The United States seeks to enjoin the acquisition by The Manitowoc Company, Inc. (“Manitowoc”) of Grove Investors, Inc. (“Grove”) and its wholly owned subsidiary, National Crane Corp. (“National Crane”).
2. Grove (through its National Crane subsidiary) and Manitowoc are, respectively, the largest and third largest manufacturers of medium- and heavy-lift boom trucks in North

America. Medium- and heavy-lift boom trucks are stiff boom telescopic cranes that are mounted on standard flat-bed commercial truck chassis and capable of lifting approximately 15 tons to over 40 tons. The combination of Manitowoc and Grove would dominate the sale of medium- and heavy-lift boom trucks with a market share of over 60 percent of all units sold. The merged firm and one other competitor would account for in excess of 90 percent of all medium- and heavy-lift boom trucks sold in North America.

3. The proposed acquisition, if consummated, would eliminate the head-to-head competitive rivalry that currently exists between Manitowoc and Grove in developing, producing, and selling medium- and heavy-lift boom trucks -- competition that has, over the years, produced significant technological improvements in boom truck safety, quality, durability, usability, and lift capability, as well as highly competitive prices and terms for boom truck sales. By reducing the number of major producers of medium- and heavy-lift boom trucks in North America from three to two, this transaction would substantially increase the likelihood that Manitowoc will unilaterally increase, or that it and the single remaining major competitor will tacitly or explicitly cooperate to increase, prices of medium- and heavy-lift boom trucks to the detriment of consumers.

4. Unless this proposed acquisition is blocked, Manitowoc's acquisition of Grove will substantially lessen competition in the production and sale of medium- and heavy-lift boom trucks and likely lead to an increase in prices and a reduction in quality and innovation for medium- and heavy-lift boom trucks in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

I.

JURISDICTION AND VENUE

5. This Complaint is filed by the United States under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

6. Manitowoc and Grove develop, produce, sell, and provide parts and warranty support for medium- and heavy-lift boom trucks in the flow of interstate commerce. Manitowoc's and Grove's activities in developing, producing, and selling medium- and heavy- lift boom trucks and parts substantially affect interstate commerce. This Court has jurisdiction over the subject matter of this action and defendants pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1331, 1337(a) and 1345.

7. Manitowoc, Grove, and National Crane transact business and are found within this district in that they sell goods and services to customers located in the District of Columbia. Therefore, venue is proper in this judicial district pursuant to 15 U.S.C. § 22 and 28 U.S.C. § 1391.

II.

DEFENDANTS

8. Manitowoc is a Wisconsin corporation with its principal place of business in Manitowoc, Wisconsin. Manitowoc is a leading manufacturer and supplier of several types of cranes, including medium- and heavy-lift boom trucks. In 2001, Manitowoc reported net sales of about \$1.2 billion, including approximately \$35 million in sales of medium- and heavy-lift boom trucks and associated truck chassis and crane parts.

9. Grove is a Delaware corporation with its principal place of business in Shady Grove, Pennsylvania. National Crane, a Grove subsidiary, is a Delaware corporation with its principal place of business in Waverly, NE. Grove designs, produces, and sells a wide variety of mobile cranes. Grove's National Crane subsidiary designs, produces and sells medium- and heavy-lift boom trucks. In 2001, Grove reported sales of about \$713 million, including approximately \$60 million in sales of medium- and heavy-lift boom trucks and associated truck chassis and crane parts.

III.

THE PROPOSED TRANSACTION

10. On March 18, 2002, Manitowoc and Grove entered into an agreement and plan of merger, pursuant to which Manitowoc intends to acquire Grove (and its National Crane subsidiary) in a transaction valued at approximately \$270 million. The parties intend to close the transaction in early August 2002.

IV.

TRADE AND COMMERCE

A. The Relevant Product Market

11. A "boom truck" is a straight or "stiff" boom telescopic crane outfitted with a hook and winch and mounted on a standard flat-bed commercial (Class 7 or 8) truck chassis. A boom truck usually is sold with outriggers, pads, and devices for reinforcing the chassis in order to improve safety and stability. Although produced in a wide range of models and sizes, boom trucks can be broadly distinguished by their nominal load lifting capability as light-, medium- and heavy-lift cranes. Various models of medium- or heavy-lift boom trucks can safely lift or "pick" a load that weighs from a little under 15 tons to well over 40 tons and place it from 40 feet to well over

100 feet away. Mounted on a standard flat-bed commercial truck chassis, medium- and heavy-lift boom trucks are not only mobile, but are also capable of hauling relatively large payloads from site to site at interstate highway speeds. Medium- and heavy-lift boom trucks are bought by many types of customers, including crane rental, construction, utility, and mining firms, who highly value the relatively low cost, exceptional reach, load-lift capability, mobility, general ease of use, and overall versatility of these mobile cranes.

12. Medium- and heavy-lift boom trucks offer a unique combination of price, versatility, and performance unmatched by any other type of crane (*e.g.*, knuckleboom, hydraulic truck, all-terrain, rough-terrain, tower, and lattice boom cranes; service vehicles; or boom trucks with lower nominal lift rating capability) or lifting device (*e.g.*, fork-lift trucks, aerial manlift vehicles).

13. A small but significant and nontransitory increase in prices for medium- or heavy-lift boom trucks would not cause a sufficient number of medium- or heavy-lift boom truck purchasers to switch to other types of cranes or lifting devices so as to make such a price increase unprofitable and unsustainable. Accordingly, the development, production, and sale of medium- and heavy-lift boom trucks is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

B. The Relevant Geographic Market

14. Manitowoc makes medium- and heavy-lift boom trucks at a manufacturing facility located in Georgetown, Texas. Grove, through National Crane, makes light-, medium- and heavy-lift boom trucks at a production plant in Waverly, Nebraska. In addition, one large competitor and two smaller rivals also produce medium- and heavy-lift boom trucks in plants in the United States and Canada. Finally, a single foreign firm produces medium-lift boom trucks in a plant in Asia.

Its exports to North America, however, account for less than one percent of sales of medium- and heavy-lift boom trucks.

15. North American medium- and heavy-lift boom trucks lift much heavier loads with far greater reach than boom trucks produced outside of North America. The single foreign firm known to make medium-lift boom trucks historically has sold very few of them in North America and is unlikely to sell significantly more, post merger.

16. A small but significant and nontransitory increase in prices for medium- or heavy-lift boom trucks produced at North American plants would not cause a sufficient number of purchasers to switch to medium- and heavy-lift boom trucks produced outside North America so as to make such a price increase unprofitable and unsustainable. Accordingly, North America is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Anticompetitive Effects

17. The three major boom truck producers in North America -- Grove (via National Crane), Manitowoc, and one other competitor -- directly compete in developing, producing, and selling medium- and heavy-lift boom trucks. Because of their superior production capacity and capability, strong dealer networks, broad product lines and strong reputations for safety and reliability, these major producers dominate the North American boom truck market. Individually and collectively, the three smaller rivals (two North American and one Asian) do not have the production capacity; strong reputations for quality, safety and reliability; or extensive distribution networks necessary to attract sufficient sales away from the larger market incumbents, and hence the ability to effectively constrain any post-merger exercise of market power

18. The proposed acquisition will reduce competition substantially in the highly concentrated market for the development, production, and sale of medium- and heavy-lift boom

trucks in North America. Grove accounts for approximately 40 percent, and Manitowoc over 20 percent, of unit sales of medium- and heavy-lift boom trucks in North America. The merged firm and its largest competitor would account for over 90 percent of sales of medium- and heavy-lift boom trucks in North America. Using unit sales as an indicator of market share and applying a measure of market concentration called the Herfindahl-Hirschman Index (“HHI”), defined and explained in the Appendix attached hereto, the post-acquisition HHI would increase by about 1600 points, resulting in a post-merger HHI of about 4900, well in excess of the level that ordinarily would raise significant antitrust concerns.

19. Purchasers of medium- and heavy-lift boom trucks have benefited from competition between Grove and Manitowoc through lower prices and improved products. Manitowoc’s acquisition of Grove would eliminate substantial competition and lead to an increase in prices and reduction in innovation and quality of medium- and heavy-lift boom trucks.

20. The proposed transaction, if consummated, would eliminate a significant competitor and facilitate unilateral or coordinated increases in prices, or a reduction in levels of quality and innovation, for medium- and heavy-lift boom trucks.

D. Entry Unlikely to Deter a Post Acquisition Exercise of Market Power

21. Successful entry into the boom truck market would not be timely, likely or sufficient to deter any unilateral or coordinated exercise of market power as a result of the transaction.

22. Significant barriers prevent de novo and lateral entry into the development, production, and sale of medium- and heavy-lift boom trucks in North America. To compete effectively, an entrant must develop a line of medium- and heavy-lift boom trucks; design and

construct a production facility of sufficient size, scale, and scope of operations; and establish a network of capable dealers to sell, service, and support its line of medium- and heavy-lift boom trucks -- all of which would require substantial sunk investments that are large relative to the size and risk of expected profits to be earned in the medium- and heavy-lift boom truck market.

Because a defective or unreliable medium- or heavy-lift boom truck can expose the manufacturer and user to substantial liability for property damage and personal injuries, a new entrant also must establish a strong reputation for producing boom trucks of high quality, safety, and reliability.

23. It would be extremely difficult for a new entrant to establish the production facilities, distribution network, strong reputation, and customer following that it would require to displace significant sales from the three major manufacturers of medium- and heavy-lift boom trucks. For these reasons, post-merger entry would not be timely, likely or sufficient to deter a post-acquisition unilateral or coordinated exercise of market power in the development and sale of medium- and heavy-lift boom trucks.

V.

VIOLATIONS ALLEGED

24. The effect of Manitowoc's proposed acquisition of Grove may substantially lessen competition and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

25. The transaction will likely have the following anticompetitive effects, among others:

- a. Competition generally in the development, production, and sale of medium- and heavy-lift boom trucks in North America would be substantially lessened;

- b. Actual and potential competition between Manitowoc and Grove in the development, production, and sale of medium- and heavy-lift boom trucks in North America would be eliminated; and
- c. Prices for medium- and heavy-lift boom trucks and parts sold in North America would likely increase and the levels of quality and innovation would likely decline.

26. Unless prevented, the acquisition of Grove by Manitowoc would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

VI.

REQUESTED RELIEF

27. Plaintiff requests:
- a. That the proposed acquisition of Grove by Manitowoc be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18;
 - b. That defendants and all persons acting on their behalf be permanently enjoined and restrained from carrying out any contract, agreement, understanding or plan, the effect of which would be to combine Grove with the operations of Manitowoc;
 - c. That plaintiff recover the costs of this action; and
 - d. That plaintiff receive such other and further relief as the case requires and this Court may deem proper.

Dated: July 31, 2002.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

_____/s/
Charles A. James
Assistant Attorney General

_____/s/
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Deputy Assistant Attorney General

_____/s/
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APPENDIX A

HERFINDAHL-HIRSCHMAN INDEX CALCULATIONS

“HHI” means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is 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 thirty, thirty, twenty, and twenty 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 and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. See *Merger Guidelines* §1.51.