UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA Department of Justice Antitrust Division 1401 H Street, NW Suite 3000 Washington, D.C. 20530 Plaintiff, v. COOKSON GROUP PLC 165 Fleet Street London EC4A 2AE England, COOKSON AMERICA INC. 1 Cookson Place Providence, RI 02903-3248, FOSECO PLC Coleshill Road Fazeley Tamworth Staffordshire B78 3TL England, and FOSECO METALLURGICAL INC. 20200 Sheldon Road Cleveland, OH 44142 Defendants.	Civil Action No. JUDGE Case: 1:08-cv-00389 Assigned To : Urbina, Ricardo M. Assign. Date : 3/4/2008 Description: Antitrust

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to enjoin the proposed acquisition by Cookson

Group plc of Foseco plc and to obtain equitable and other relief. The United States complains and alleges as follows:

I. NATURE OF THE ACTION

1. On October 11, 2007, Cookson and Foseco announced that they had reached agreement on the terms of a recommended cash offer by Cookson for the entire issued and to-be-issued share capital of Foseco in a transaction valued at approximately $1 billion.

2. Cookson and Foseco both manufacture and sell isostatically pressed carbon bonded ceramics products ("CBCs"), which are used to control the flow and enhance the quality of steel produced in the continuous casting steelmaking process. Cookson's proposed acquisition of Foseco would combine two of only three North American manufacturers of certain CBCs.

3. The United States brings this action to enjoin Cookson's proposed acquisition of Foseco because it would substantially lessen competition in the markets for certain CBCs in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

II. PARTIES TO THE PROPOSED ACQUISITION

4. Cookson Group plc ("Cookson"), a United Kingdom corporation with its headquarters in London, England, is a manufacturer and processor of ceramics, electronics, and precious metals. Cookson's total 2006 worldwide revenues were approximately $3.3 billion, and its total 2006 U.S. revenues were about $356 million. Cookson America Inc., a wholly-owned subsidiary of Cookson Group plc, is a Delaware corporation with its headquarters in Providence, Rhode Island. Cookson, through its subsidiaries, manufactures CBCs in the United States and Mexico and distributes them throughout the United States. In 2006, Cookson's U.S. CBC revenues were about $75 million.

5. Foseco plc, a United Kingdom corporation with its headquarters in Staffordshire, England, manufactures refractories and related products for sale, and offers services worldwide to the steel and foundry industries. Its total 2006 worldwide revenues were approximately $817 million, and its total 2006 U.S. revenues were about $110 million. Foseco Metallurgical Inc., a wholly-owned subsidiary of Foseco plc, is a Delaware corporation with its headquarters in Cleveland, Ohio (together with Foseco plc, "Foseco"). Foseco manufactures CBCs in the United States and distributes them throughout the United States. In 2006, Foseco's U.S. CBC revenues were about $4 million.

III. JURISDICTION AND VENUE

6. The United States brings this action under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain the Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

7. Defendants manufacture and sell CBCs in the flow of interstate commerce. Defendants' activities in manufacturing and selling these products substantially affect interstate commerce. This Court has subject matter jurisdiction over this action pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

8. Defendants have consented to venue and personal jurisdiction in this judicial district and venue is proper under 28 U.S.C. § 1391(d).

IV. TRADE AND COMMERCE

A. CBCs Generally

9. Refractories are non-metallic ceramics that serve as a heat buffer or lining in industrial devices because they withstand extremely high temperatures. In the steelmaking process, refractory products serve as barriers between hot molten steel and the non-consumable equipment such as the furnaces, ladles, and tundishes. A ladle is a large container that receives molten steel from a furnace; a tundish is a receptacle that receives steel from the ladle and controls the flow of steel into molds during the continuous casting process.

10. CBCs are consumable, isostatically pressed refractory products that control the flow of molten steel from the ladle to the tundish and onto the continuous casting mold during the continuous casting process. CBCs are consumed through exposure to molten steel and must be replaced frequently.

11. Isostatic pressing is a process used in the manufacture of CBCs to increase the refractory materials' density and homogeneity, resulting in a CBC with increased thermal shock resistance and resistivity to chemical attack. Carbon-bonded alumina graphite is the main refractory material used to make CBCs.

12. The "design" of a CBC refers to both its shape and the alumina graphite recipe. Each customer uses different designs tailored to the equipment it uses in the casting process. Customers with multiple plants require custom-designed CBCs for each plant and may require multiple custom-designed CBCs within each plant. Designs depend on variables such as the customer's cast strand size and shape, casting speed, and the steel grades produced. Customers change CBC recipes and/or shapes in order to improve steel quality, meet new steel

specifications, or save on CBC costs.

13. CBCs undergo rigorous testing by the manufacturer and the customer to ensure reliable performance and value under actual casting conditions. Because CBCs are critical to the steelmaking process, most customers have a policy of splitting sales between at least two suppliers to ensure supply.

B. The Relevant Product Markets

1. Ladle Shrouds

14. Ladle shrouds are CBCs that prevent molten steel from re-oxidizing and ensure the steel transfers safely from the ladle to the tundish.

15. There are no good substitutes for ladle shrouds. A small but significant post-acquisition increase in the price of ladle shrouds would not cause customers to substitute another product or otherwise reduce their usage of ladle shrouds in sufficient quantities so as to make such a price increase unprofitable.

16. The manufacture and sale of ladle shrouds is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

2. Stopper Rods

17. Stopper rods are CBCs used to control the flow of steel out of the tundish and are one of two types of devices, the other being slide gate systems, that can perform this function. Customers use only one device or the other in a given tundish. The choice of device depends on the design of the tundish. Once the choice of tundish design has been made, a customer cannot switch from a stopper rod to a slide gate system without also replacing or substantially reconfiguring the tundish—significantly disrupting their operations.

18. Because of high switching costs, a small but significant post-acquisition increase in the price of stopper rods would not cause customers to switch to slide gate systems or otherwise reduce their usage of stopper rods in sufficient quantities so as to make such a price increase unprofitable.

19. The manufacture and sale of stopper rods is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

C. The Relevant Geographic Markets

20. Cookson and Foseco manufacture ladle shrouds and stopper rods at facilities in North America for sale in the United States.

21. Virtually all ladle shrouds and stopper rods purchased by customers in the United States are produced in plants located in North America. Although a few manufacturers outside of North America make ladle shrouds and stopper rods, firms with production facilities in North America have a significant advantage over these foreign manufacturers in delivered cost and/or in competing for customers that value shorter lead times in their supply chain.

22. A small but significant post-acquisition increase in the price of ladle shrouds and stopper rods would not cause customers in North America to switch to purchases from manufacturers outside of North America in sufficient numbers so as to make such a price increase unprofitable.

23. Accordingly, within the meaning of Section 7 of the Clayton Act, the relevant geographic market for ladle shrouds and stopper rods is North America.

D. Anticompetitive Effects: The Proposed Transaction Will Harm Competition in the Markets for Ladle Shrouds and Stopper Rods

24. The production of ladle shrouds and stopper rods involves similar materials and manufacturing processes. In general, manufacturers that are successful in selling ladle shrouds to U.S. customers are also successful in selling stopper rods to U.S. customers, and vice versa.

25. Cookson and Foseco are two of only three firms that manufacture and sell the vast majority of ladle shrouds and stopper rods to U.S. customers. Cookson and Foseco have competed with one another on price, service, and innovation in the markets for stopper rods and ladle shrouds. The markets for ladle shrouds and stopper rods would become substantially more concentrated if Cookson acquires Foseco. Cookson and Foseco would have a combined share of approximately 75 percent. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI") (defined and explained in Appendix A), the proposed transaction would increase the HHI in both markets by approximately 700 points to a post-transaction level in excess of 6000.

26. Customers request bids from ladle shroud and stopper rod suppliers and consider price, quality, service, and innovation in selecting the winning bidder. The proposed acquisition will eliminate Foseco as an independent bidder.

27. This reduction in the number of active bidders from three to two will reduce competition and likely will result in higher prices and/or reductions in service and innovation for a significant number of customers in the markets for ladle shrouds and stopper rods. The likely anticompetitive effect is heightened due to customers' preferences to maintain supply relationships with two independent suppliers simultaneously. In light of such preferences, the

proposed acquisition will eliminate competition to be a customer's second supplier.

28. Foreign manufacturers likely will not have the incentive or ability to defeat an anticompetitive increase in price or reduction in service or innovation because of their high delivered costs, customers' preferences for North American suppliers, and/or the poor quality and reputation of their products.

29. The proposed acquisition will substantially lessen competition in the manufacture and sale of ladle shrouds and stopper rods in the United States in violation of Section 7 of the Clayton Act.

E. Entry: New Entrants Will Not Defeat an Exercise of Market Power

30. Successful entry into the ladle shroud and stopper rod markets would not be timely, likely, or sufficient to deter the anticompetitive effects resulting from this transaction. Timely entry sufficient to replace the market impact of Foseco would be difficult for several reasons. A new entrant would need to acquire manufacturing facilities in North America and capital equipment; assemble or develop manufacturing, technical expertise, and personnel; conduct extensive customer trials; and establish a reputation for quality and reliability among U.S. customers. An entrant undertaking these steps would be unable to enter in less than two years.

31. There are foreign firms with a share of the U.S. market for more complex CBCs, known as subentry nozzles and subentry shrouds. Because of the expertise and reputation they have developed in these markets, theoretically they would be capable of entering the domestic market for ladle shrouds and stopper rods. None of these firms, however, are likely to open U.S. manufacturing facilities within the next several years.

V. VIOLATION ALLEGED

32. The proposed acquisition of Foseco by Cookson would substantially lessen competition in interstate trade and commerce in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

33. Unless restrained, the acquisition will have the following anticompetitive effects, among others:

a. competition in the markets for the manufacture and sale of ladle shroud and stopper rods in the United States will be lessened substantially;

b. actual and potential competition between Cookson and Foseco in the manufacture and sale of ladle shrouds and stopper rods in the United States will be eliminated; and

c. prices for ladle shrouds and stopper rods in the United States likely will increase, and/or service and innovation likely will decline.

VI. REQUEST FOR RELIEF

34. Plaintiff requests that:

a. Cookson's proposed acquisition of Foseco be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18;

b. defendants and all persons acting on their behalf be permanently enjoined and restrained from consummating the proposed acquisition or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to combine Cookson with the operations of Foseco;

c. plaintiff be awarded its costs for this action; and

d. plaintiff receive such other and further relief as the Court deems just and proper.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

Thomas O. Barnett
Assistant Attorney General
D.C. Bar #426840

David L. Meyer
Deputy Assistant Attorney General
D.C. Bar #414420

J. Robert Kramer II
Director of Operations and
Civil Enforcement

Maribeth Petrizzi
Chief, Litigation II Section
D.C. Bar #435204

Dorothy B. Fountain
Assistant Chief, Litigation II Section
D.C. Bar #439469

Leslie Peritz
Helena Gardner
Attorneys
United States Department of Justice
Antitrust Division, Litigation II Section
1401 H Street, NW, Suite 3000
Washington, D.C. 20530
(202) 307-0924

Dated: March 4, 2008

APPENDIX A

DEFINITION OF "HHI"

The term "HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI 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 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). 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.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and markets 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 significant antitrust concerns under the Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.