UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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UNITED STATES OF AMERICA, :

Plaintiff, :

v. :

UNITED TECHNOLOGIES CORPORATION, :

Defendant. :

- x

Civil Action No. H 77317

EQUITABLE RELIEF SOUGHT

Filed: July 5, 1977

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the defendant herein, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Act of Congress of October 15, 1914, c. 323, Clayton Act (15 U.S.C. § 25), in order to prevent and restrain the violation by the defendant, as hereinafter alleged, of Section 7 of said Act, 38 Stat. 732 (15 U.S.C. § 18), as amended.

2. United Technologies Corporation maintains offices, transacts business, and is found within the District of Connecticut.

II

THE DEFENDANT

3. United Technologies Corporation (hereinafter referred to as "United") is named as the defendant herein. United

is a corporation organized and existing under the laws of the State of Delaware and maintains its principal executive office at Hartford, Connecticut.

4. United is engaged in the manufacture and sale of utility and industrial power generating equipment, marine propulsion systems, and electrical transmission and control equipment. United is also engaged in the manufacture and sale of aircraft engines, helicopters, elevators, rocket propulsion and space systems, radar and other defense items, among other products. For the year 1976, United had net sales of $5,166,264,000 and total assets of $2,626,405,000. In 1976 United was the 35th largest industrial corporation in the United States in terms of sales.

III

TRADE AND COMMERCE

5. Utility power generating equipment is used by utilities to convert fuel into energy which, in turn, is used to generate electricity for sale to industrial, commercial, and residential customers. Presently there are three types of utility power generating equipment in use: fossil fuel boilers, gas turbines, and nuclear steam systems. Fossil fuel boilers and nuclear systems generate power in the form of steam which drives a steam turbine which, in turn, drives an electric generator. A gas turbine produces a flow of hot gases which drives a turbine rotor which, in turn, drives an electric generator. Gas turbines are also used in what are called combined cycle systems. In combined cycle systems, gas turbine systems are combined with steam system components to utilize more efficiently the energy

produced by the gas turbine. In such a system, waste heat from a gas turbine is directed to a boiler within which steam is created which is used to drive a steam turbine which in turn drives an electric generator. All of these forms of power generating equipment are offered for sale to the same utility customers and most utilities maintain a mix of different types of equipment as part of their power systems.

6. Although the various types of power generating equipment have different physical qualities, each is utilized for the same purpose -- the conversion of fuel to the kinetic or thermal energy used to drive electric generators. Consequently, utilities consider and evaluate the advantages and disadvantages of the various types of equipment, including the nature of the generating capacity needed, installation time, installation cost, operating cost, and other economic, technological, and environmental considerations. In many instances, the purchase by a utility of a gas turbine system or a combined cycle system represents an alternative to the purchase of another type of equipment.

7. Manufacturers, sellers, and users of utility power generating equipment measure the production capacity of this equipment in terms of the number of megawatts of electricity that can be produced using the power which the equipment generates.

8. In 1976, United was the leading seller of gas turbines with orders of $72,912,000, accounting for 39.4 percent of the megawatt capacity of all gas turbines and for 7.6 percent

of the megawatt capacity of all utility power generating equipment ordered that year. There are four companies engaged in the manufacture and sale of gas turbines on a regular basis. In 1976, these four companies accounted for 98 percent of the megawatt capacity of all gas turbine orders.

9. The use of the gas turbine as a means of powering electric generators is a relatively recent development. Prior to the 1960's, the utility power generating equipment market consisted entirely of fossil fuel boilers. Since then, the gas turbine and the nuclear system have made substantial inroads. While fossil fuel boilers accounted for 100 percent of the utility power generating equipment market in the 1950's, in 1976 fossil fuel boilers accounted for 50.8 percent, with nuclear systems and gas turbines accounting for 29.9 percent and 19.3 percent, respectively. The cumulative market shares since 1965 have been 54 percent for fossil fuel boilers, 37 percent for nuclear systems, and 9 percent for gas turbines.

10. The Babcock & Wilcox Company (hereinafter referred to as "B&W") is a corporation organized and existing under the laws of the State of New Jersey. It maintains its principal executive offices in New York, New York.

11. B&W is a leading manufacturer of utility power generating equipment, including fossil fuel boilers and nuclear systems. In addition, B&W supplies utilities with nuclear fuels and nuclear fuel assemblies and specially engineered accessories and components such as air heaters, fans, precipitators, cleaning systems for heat transfer services, nuclear reactor components, control and performance computers,

automatic controls and instruments, and nuclear control rod drives, heavy pressure vessels, heat exchangers, and other products for use in utility power generating plants, as well as engineering and construction services for such plants and equipment. B&W also produces fossil fuel boilers and nuclear systems for marine propulsion systems, and fossil fuel boilers for industrial power generation. B&W is also a leading manufacturer of tubular specialty steel products, refractories, automated machines, and machine tools.

12. In 1976, B&W had net sales of $1,691,800,000 and total assets of $1,124,100,000. B&W was the 129th largest industrial corporation in the United States in 1976 in terms of sales. In 1976, 100 percent of utility orders for nuclear systems and 25 percent of utility orders for fossil boilers were placed with B&W. In 1976, 50 percent of B&W's sales were to electric utilities.

13. The market for utility power generating equipment is highly concentrated. In 1976, orders received by the eight largest manufacturers represented 99.6 percent of the megawatt capacity of all utility power generating equipment sold. The four leading firms had a cumulative market share of 80.7 percent in terms of megawatt capacity. B&W was the leading seller of utility power generating equipment with a 42.6 percent share of that market. United was the fifth largest seller in the utility power generating equipment market with a 7.6 percent share of that market. Thus, on the basis of 1976 orders, B&W and United combined would have represented 50.2 percent of the megawatt capacity of the utility power generating equipment market and the top four companies would then have represented 88.3 percent of the megawatt capacity of that market.

14. Economic, technological, political, and environmental considerations which raise uncertainties as to the availability of fuels and equipment and their use, cause utilities to look ahead in their purchasing policies to new types of products, processes, and fuels to be used in the generation of power. To satisfy the needs of their utility customers, power generating equipment manufacturers commit substantial resources to the research and development of new technologies. Governmental and private agencies, as well as utilities themselves, make available additional millions of dollars annually to stimulate the research and development of new processes for creating power. Manufacturers prepare and present new projects to these funding agencies in competition for the funds available anticipating the advantage of being the first marketer of a new product or process.

15. Research and development programs have, in the past, resulted in many important additions and variations in the methods of powering electric generators, bringing about significant changes in the mix of equipment purchased and maintained by utility companies. Thus, utility power generating equipment manufacturers, including United and B&W, continually compete for future market shares by developing and marketing new utility power generating equipment and improved versions of utility power generating equipment presently in use. United and B&W are heavily committed to the development of new technologies.

16. Utility power generating equipment is regularly sold and shipped in interstate and foreign commerce by producers thereof, including United and B&W, to customers utilizing such products located throughout the United States and in many foreign countries.

V

VIOLATION ALLEGED

17. On or about March 29, 1977, defendant United announced its intention to make a tender offer for all of the stock of B&W. As a result of filing requirements with various government agencies and legal action by B&W, United has been temporarily prevented from making that tender offer. However, United evidences a resolute intent to make the tender offer as soon as it is legally possible.

18. The effect of the acquisition of B&W by United may be substantially to lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act in the following ways, among others:

(a) Actual competition and the potential for increased competition between United and B&W in the manufacture and sale of utility power generating equipment will be eliminated;

(b) Actual competition and the potential for increased competition in the utility power generating equipment market generally may be substantially lessened; and

(c) Concentration in the manufacture and sale of utility power generating equipment will be substantially increased.

PRAYER

WHEREFORE, the plaintiff prays:

1. That the aforesaid acquisition be adjudged in violation of Section 7 of the Clayton Act.

2. That a temporary restraining order and preliminary injunction be issued against the defendant and all persons acting in its behalf, preventing and restraining it from acquiring any of the stock of B&W or otherwise consolidating or combining the businesses of United and B&W pending final adjudication of the merits of this complaint.

3. That United be perpetually enjoined from carrying out the tender offer referred to in paragraph 17 herein or any similar plan or agreement, the effect of which would be for United to acquire any of the stock of B&W or otherwise consolidate or combine the businesses of United and B&W.

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

5. That plaintiff recover the costs of this suit.

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