
IN THE MATTER OF
CHEMETRON CORPORATION

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 7 OF THE CLAYTON ACT

Docket C-1567. Complaint, July 28, 1969—Decision, July 28, 1969

Consent order prohibiting a Chicago, Illinois, manufacturer of arc welding
apparatus from acquiring any manufacturer or distributor of arc or gas

Complaint

76 F.T.C.

welding equipment for a period of 10 years without prior Commission approval.

COMPLAINT

The Federal Trade Commission having reason to believe that Chemetron Corporation has violated the provisions of Section 7 of the Clayton Act, as amended, (15 U.S.C. Section 18) by its acquisition of the Welding Products Division of Harnischfeger Corporation, and therefore pursuant to Section 11 of said Act, it issues this complaint, stating its charges in that respect as follows:

I. *Definitions*

1. For the purposes of this complaint, the following definitions shall apply:

(a) *Arc Welding Apparatus*: Arc Welding Machines Components, and Accessories, Except Electrodes, SIC product codes 36231 11-35; Arc Welding Electrodes, Metal, SIC product codes 36232 11-53. In addition, arc welding apparatus is to include the following accessories within SIC product code 36231 98: arc torches, automatic welding heads, semiautomatic welding guns and standard positioners.

II. *Chemetron Corporation*

2. Respondent, Chemetron Corporation, "Chemetron" is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 840 N. Michigan Avenue, Chicago, Illinois.

3. Chemetron ranks three hundred and sixteenth (316) among all industrial corporations in the United States (1967 figures) with total sales of \$235 million in 1967. Chemetron's 1967 sales of arc welding apparatus were twenty-two million dollars (\$22,000,000), accounting for 10% of total sales, ranking it fifth among all manufacturer-sellers of arc welding apparatus, with a market share of approximately 7%.

By 1967, Chemetron's net income was \$16 million and its total assets were \$209 million.

4. In 1968, Chemetron ranked as the fifth largest manufacturer-seller of arc welding apparatus with an approximate market share of 7%. Chemetron sold arc welding apparatus manufactured by its Alloy Rods Division and its All States Welding Al-

loys Co. (a subsidiary). Chemetron's proprietary interest in the Alloy Rods Division and All State Welding Alloys Co. is a result of two acquisitions consummated during the last seven years. Prior to these two acquisitions Chemetron did not manufacture arc welding apparatus.

5. Prior to the acquisition of the Welding Products Division of Harnischfeger, Chemetron purchased substantial quantities of arc welding apparatus from Harnischfeger and sold these products through Chemetron's extensive distribution system.

6. Chemetron's distribution system services its entire line of welding apparatus and welding related products (welding gases, gas welding apparatus). Chemetron has 400 distributors throughout the United States who sell and service its welding apparatus and related products.

7. Chemetron is amongst the nation's five hundred (500) largest industrial corporations, with assets in excess of two hundred million dollars (\$200,000,000).

8. Prior to the acquisition, the Welding Products Division of Harnischfeger Corporation sold arc welding apparatus to other corporations, many of whom were potential or actual competitors of Chemetron in the distribution and sale of such products.

9. At all times relevant herein, Chemetron purchased, sold and shipped products in interstate commerce, and was engaged in "commerce" within the meaning of the Clayton Act.

III. *Welding Products Division of Harnischfeger Corporation*

10. Harnischfeger Corporation is a corporation organized and existing under the laws of the State of Wisconsin with its principal office and place of business at 4406 West National Avenue, Milwaukee, Wisconsin.

11. Prior to January 6, 1969, the Welding Products Division of Harnischfeger Corporation was engaged in the manufacture and sale of arc welding apparatus. Its manufacturing facilities were located at Monticello, Indiana; Leola, Pennsylvania; Charlottesville, Virginia; and Esconaba, Michigan. Sales of its products were made throughout the United States. In 1967, the Welding Products Division had sales of \$25 million, with a net loss of \$750,000.

12. At all times relevant herein, the Welding Products Division of Harnischfeger Corporation purchased, sold and shipped products in interstate commerce and was engaged in "commerce" within the meaning of the Clayton Act.

IV. Trade and Commerce

13. The welding apparatus industry accounted for total sales of \$500 million in 1967. Welding apparatus consists of three major subdivisions: arc welding apparatus, gas welding apparatus and resistance welding apparatus. In 1958, industry sales of all welding apparatus were \$290 million.

14. Sales of arc welding apparatus account for the largest single share of the total sales of welding apparatus in the United States. In 1967, sales of arc welding apparatus accounted for 70% of all sales of welding apparatus in the United States.

15. The market for arc welding apparatus is highly concentrated. In 1967, the top four firms engaged in the manufacture and sale of arc welding apparatus accounted for 70% of total sales in the market and the top eight firms 90% of the total sales in the market. Few firms have entered this industry in the past 10 years.

16. The manufacture and sale of arc welding apparatus constitutes a line of commerce, since the apparatus has peculiar characteristics and uses and is designed for specific functions that cannot be performed by other types of welding apparatus.

V. Violation of the Clayton Act

17. On January 6, 1969, Chemetron acquired the assets of the Welding Products Division of Harnischfeger Corporation in exchange for cash in excess of seven million dollars (\$7,000,000) and seventy-five thousand (75,000) shares of convertible preferred shares of Chemetron, convertible into common shares not less than two years from date of issue.

VI. Effects of the Acquisition

18. The effect of the acquisition of the Welding Products Division of Harnischfeger Corporation, as described above, may be substantially to lessen competition or to tend to create a monopoly in the manufacture and distribution of arc welding apparatus throughout the United States or portions thereof in violation of Section 7 of the Clayton Act, as amended, in the following ways, amongst others:

(a) Substantial competition, both actual and potential, has been or may be eliminated between Chemetron and the Welding Products Division of Harnischfeger Corporation in the manufacture and distribution of arc welding apparatus.

(b) Substantial competition both actual and potential, has been eliminated between Chemetron and other actual or potential purchasers of arc welding apparatus from Harnischfeger's Welding Products Division.

(c) Harnischfeger's Welding Products Division has been eliminated as a competitor from the arc welding apparatus market.

(d) Concentration in the arc welding apparatus industry has been or may be substantially increased to the detriment of actual or potential competition.

(e) Other acquisitions in the arc welding apparatus industry may be encouraged or stimulated, thus multiplying the competitive impact of the acquisition challenged herein.

VII. *The Violation*

19. The acquisition by Chemetron of the Welding Products Division of Harnischfeger Corporation as herein-above alleged constitutes a violation of Section 7 of the Clayton Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Restraint of Trade proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 7 of the Clayton Act, as amended; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated Section 7 of the Clayton Act, as amended, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement

and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Chemetron Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 840 North Michigan Avenue, in the city of Chicago, State of Illinois.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

I

It is ordered, That, for a period of ten (10) years from the date this Order becomes final, Chemetron Corporation (hereinafter referred to as "Chemetron") a corporation, through its officers, directors, agents, representatives and employees shall cease and desist from acquiring, without prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries or otherwise, the whole or part of the stock, share capital or assets of any concern, engaged in the business of manufacturing, distributing or selling in the United States arc and gas welding apparatus as herein defined. Arc or gas welding apparatus shall include all products enumerated by the 1967 Census of Manufacturers (Numerical List of Manufactured Products Bureau of the Census) within the following Standard Industrial Classification (SIC) Code Numbers: *Arc Welding Machines Components, and Accessories, Except Electrodes*, SIC product codes 36231 11-35; *Arc Welding Electrodes, Metal*, SIC product codes 36232 11-53; *Welding Apparatus, Except Electric*, SIC product code 35483 25 (Gas Welding Apparatus). In addition, arc welding apparatus is to include the following accessories within SIC product code 36231 98: arc torches, automatic welding heads, semiautomatic welding guns and standard positioners; and gas welding apparatus is to include such other nonelectric welding equipment as is within SIC product code 35483 29.

The prohibition of acquisitions contained in the above paragraph of this Order shall include but not be confined to the entering into of any arrangement between Chemetron and any concern

engaged in the manufacture, distribution or sale of arc or gas welding apparatus (see above paragraph) pursuant to which Chemetron acquires the market share, in whole or in part, of such concern in any of the above-mentioned product lines (a) through such concern discontinuing the manufacture, distribution or sale of arc or gas welding apparatus (see above) under its own trade name or labels and thereafter distributing such products under Chemetron's trade name or labels or (b) by reason of such concern discontinuing the manufacture, distribution or sale of such products and thereafter transferring to respondent customer lists or in any other way making available to Chemetron access to customers or customer accounts.

Nothing in this Section shall require prior approval of an acquisition of the stock or assets of a concern, corporate or noncorporate, when that concern is a distributor offering for sale arc welding apparatus and/or gas welding apparatus (as herein defined in the body of this order) purchased from Chemetron and (a) the acquired concern has gross annual sales of arc and/or gas welding apparatus not in excess of two hundred and fifty thousand dollars (\$250,000): *Provided*, That the number of such acquisitions shall be limited to three (3) or (b) whose financial condition is such that it is unable to pay its current obligations when due, and for both (a) and (b) above, respondent shall divest its ownership interest in such distributor(s) within a period not in excess of three (3) years from the date(s) of such acquisition(s).

It is further ordered, That Chemetron Corporation shall notify the Commission at least 90 days prior to the consummation of any merger or acquisition wherein Chemetron acquires any part of the assets or stock or any other ownership of any enterprise engaged in the manufacture, distribution or sale of *Resistance Welding Apparatus* (*Resistance Welders, Components, Accessories and Electrodes*, SIC product codes 36233 13-81) and engaged in commerce in the United States.

It is further ordered, That Chemetron shall within sixty (60) days following the effective date of this order, and at such further times as the Commission may require, submit a verified report in writing to the Federal Trade Commission setting forth in detail the manner and form in which it intends to comply, is complying or has complied with this prohibition on acquisitions.

It is further ordered, That Chemetron shall forthwith distribute a copy of this Order to each of its operating divisions.

Complaint

76 F.T.C.

IN THE MATTER OF

HILCO HOMES CORPORATION

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-1568. Complaint, July 28, 1969—Decision, July 28, 1969

Consent order requiring a Philadelphia, Pa., housing and building contractor to cease using bait tactics, false advertising, and deceptive pricing representations, and failing to disclose that settlement and other costs are to be borne by the purchaser of its houses.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Hilco Homes Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Hilco Homes Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business formerly located at 70th Street off Essington Avenue, in the city of Philadelphia, State of Pennsylvania, with present address 7320 Old York Road, Philadelphia, Pennsylvania.

PAR. 2. Respondent has engaged in the manufacturing, advertising, offering for sale, sale, distribution and construction of houses, garages, other structures, and other products to the public.

PAR. 3. In the course and conduct of its business, respondent caused its products, when sold, to be shipped from its place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its products, respond-