

Complaint

76 F.T.C.

IN THE MATTER OF

## CURTISS-WRIGHT CORPORATION

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

*Docket 8703. Complaint, Aug. 8, 1966—Decision, Sept. 12, 1969*

Order dismissing a complaint which charged a Wood-Ridge, N.J., distributor of aircraft engine parts with monopolizing the sale of its products and attempting to eliminate competition in the overhaul of its engines for the reason that jet engines are replacing reciprocating piston driven engines in both the civilian and military markets.

## 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 Curtiss-Wright Corporation, sometimes hereinafter referred to as respondent or Curtiss-Wright, has violated the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. Section 45), and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in this respect as follows:

PARAGRAPH 1. Respondent Curtiss-Wright 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 at 304 Valley Boulevard, Wood-Ridge, New Jersey.

PAR. 2. (a) Curtiss-Wright is engaged in the sale of various products some of which it produces and some of which are produced for it by others. Respondent's stock is listed on and traded over the New York Stock Exchange and its business is substantial with sales, including those of subsidiaries, in excess of \$200,000,000 for each of the years from 1960 to 1963 inclusive.

(b) Included among the products sold and distributed by Curtiss-Wright are aircraft engines and parts therefor which it sells or has sold to the United States Government for use in military aircraft, and to others, including commercial airlines, both domestic and foreign. Parts for aircraft engines are also sold and have been sold by respondent to parties with which it enters into agreements whereunder such parties are designated as "Approved Overhaul Bases" for specified Curtiss-Wright engines, and

under the terms of which respondent agrees, *inter alia*, to distribute to such bases service manuals and bulletins and to sell thereto spare parts for use in the repair or overhaul of Curtiss-Wright engines. In addition to entering into agreements whereby it appoints others as "Approved Overhaul Bases" for its engines, Curtiss-Wright itself also engages and has engaged in the overhaul or repair of such engines for others who pay respondent for services it renders in this connection.

(c) Sales of aircraft engine parts together with payments to respondent for services it renders itself in connection with the overhaul or repair of such engines aggregated more than half of total dollar sales for each of the years 1960 through 1963. Of this portion of total sales, however, sales of engine parts represented the great bulk thereof in each of such years, substantially exceeding \$100,000,000 in each of three of the four years.

PAR. 3. In the course and conduct of its business of selling and distributing parts for Curtiss-Wright aircraft engines, respondent ships, has shipped or has caused such parts to be shipped from its plant or plants in New Jersey or other States to purchasers of such parts with places of business in States other than those where shipment thereof originates or originated. Similarly, respondent after rendering such services as it performs in connection with the repair or overhaul of Curtiss-Wright engines for others, ships, has shipped or has caused such engines to be shipped from its plant or plants in New Jersey, or other States, where such services were rendered, to purchasers of such services with places of business in States other than those where shipment of such engines originated. Respondent thus is and has been engaged in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent, in the course and conduct of selling and distributing parts for Curtiss-Wright engines and rendering service in connection with the overhaul or repair of such engines in commerce, is and has been engaged in competition with others in the sale and distribution of parts for such engines and in the rendition of services in connection with the overhaul or repair thereof, except to the extent that actual or potential competition has been injured, eliminated or prevented by the acts and practices hereinafter alleged.

PAR. 5. (a) Curtiss-Wright holds or owns, either directly or indirectly, patents or patent rights upon some of the aircraft engine parts it sells and has sold. As to many other engine parts,

respondent asserts or purports to assert proprietary rights stemming from contributions it claims to have made in the development or production of such parts.

(b) Many of the engine parts distributed by Curtiss-Wright are produced for and sold to it by others. As to many, most of all of such parts so produced, respondent enters into agreements with its vendors, utilizes purchase order forms, and imposes legends claiming proprietary rights upon specifications or drawings furnished to such vendors, whereby the latter are restricted from selling parts produced for Curtiss-Wright, or providing information furnished by the latter as to specifications for such parts, to anyone else.

(c) Parts of aircraft engines produced by one manufacturer are not interchangeable with corresponding parts of engines produced by another manufacturer, *e.g.*, a Curtiss-Wright crankshaft could not be installed in a Rolls-Royce engine or vice versa. Similarly, it is economically impractical, if not technically impossible, where an engine produced by one manufacturer has been installed in an aircraft to subsequently substitute therefor an engine produced by another manufacturer.

(d) Because of the absence of interchangeability of aircraft engines and parts therefor, because of the patents, patent rights, and proprietary rights held, owned, asserted or claimed by Curtiss-Wright, and because of the restrictions respondent imposes upon vendors from which it obtains many of the parts for its aircraft engines, Curtiss-Wright is the sole source of supply for most of such engine parts. Thus, those who own or operate aircraft equipped with Curtiss-Wright engines must generally turn to respondent when they seek to purchase parts for the repair or overhaul of such engines.

PAR. 6. Respondent has attempted to monopolize, has monopolized and is monopolizing the sale and distribution of parts for aircraft engines it sells and distributes and has sold and distributed. As part and parcel and in furtherance of such attempt to monopolize and monopolization, respondent has engaged in, or pursued various acts or practices. Included among and illustrative of such acts or practices, although not necessarily limited thereto, were the following:

(a) Selling or offering to sell engine parts at unreasonably low prices approaching or below the cost of production and distribution thereof for the purpose or with the effect of eliminating competition respondent encountered therein.

(b) Subsidizing such low prices by raising prices or charging higher prices for parts as to which respondent encountered little or no competition.

(c) Soliciting customers or potential customers for engine parts to agree to use only parts obtained from Curtiss-Wright or at least to endorse the latter's philosophy that only such parts should be employed in the repair or overhaul of its engines; threatening cancellation of engine parts service adjustment policies extended to such customers if they did not so agree or endorse such philosophy; policing or attempting to police through field representatives the use of any parts obtained through any source other than Curtiss-Wright and attempting to discourage the use of such parts; and representing to customers or potential customers for engine parts that parts obtained from any source other than Curtiss-Wright were "bogus" or otherwise disparaging or attempting to discourage the use of such parts notwithstanding that certification of suitability for the projected use thereof in the form of "Parts Manufacturer Approval" had been or may have been extended to some of such parts by the Federal Aviation Agency or the Civil Aeronautics Administration.

(d) Requiring "Approved Overhaul Bases" to utilize engine parts obtained only from Curtiss-Wright and taking or proposing to take disciplinary action against a base which attempted to obtain parts from another source.

PAR. 7. (a) In addition to monopolizing and attempting to monopolize the sale and distribution of parts for its aircraft engines, respondent has attempted, through misuse and abuse of its monopolistic and dominant position in the sale and distribution of such parts, to eliminate competition it encountered in the overhaul or repair of Curtiss-Wright engines by the method or means, *inter alia*, as hereinafter more particularly described and alleged.

(b) On or about June 8, 1961, the United States Government through the U.S. Army Transportation Material Command issued a request for proposals for the overhaul of Curtiss-Wright engines. Thereafter, in response to such request, proposals were submitted by Curtiss-Wright, Aerodex, Inc., and American Airmotive Corporation, among others. The proposals of both Aerodex, Inc., and American Airmotive were lower than that submitted by Curtiss-Wright either upon the basis of parts being furnished by the Government or by the contractor at commercial list less 25 percent, with Aerodex being the lowest bidder.

(c) On or about September 15, 1961, Curtiss-Wright advised the Government that Aerodex and American Airmotive would be sold only at list price although theretofore it had been extending a 25 percent discount from commercial list prices, at least to Aerodex. Curtiss-Wright confirmed this advice by wire of September 18, 1961.

(b) By communication of October 7, 1961, Curtiss-Wright advised the Government that no aircraft engine parts at all would be sold to Aerodex or American Airmotive.

(e) Curtiss-Wright so advised the Government as heretofore alleged in subparagraphs (c) and (d) for the purpose and with the intent of eliminating Aerodex and American Airmotive as competitors for the business of overhauling Curtiss-Wright engines for which a request for proposals was issued as alleged in subparagraph (b).

PAR. 8. The acts, practices and methods of competition engaged in, followed, pursued or adopted by Curtiss-Wright, as hereinbefore alleged, constitute unfair acts, practices and methods of competition, the capacity, tendency or effect of which has been, is now or may be to injure, eliminate or prevent competition between respondent and others engaged in the sale and distribution of parts for Curtiss-Wright aircraft engines and to injure, eliminate or prevent competition between respondent and others engaged in the business of overhauling or repairing Curtiss-Wright aircraft engines, all in derogation of the public interest and in violation of Section 5 of the Federal Trade Commission Act.

#### ORDER DISMISSING COMPLAINT

This is before the Commission upon the hearing examiner's certification, filed August 15, 1969, of complaint counsel's motion to dismiss the complaint, and respondent's answer supporting such motion.

Complaint counsel assert that the significant lines of commerce covered by the complaint relate to respondent's reciprocating aircraft engine parts and its overhauling activities with respect to reciprocating engines. It appears from an affidavit filed *in camera* by complaint counsel that jet engines have replaced most reciprocating engines used by the commercial airlines and that the military is in the process of replacing reciprocating engines as well. Complaint counsel suggest, because of such changes in the marketplace, that the complaint is no longer appropriate. In light of

382

## Order Dismissing Complaint

this and other circumstances which indicate a lack of public interest in pursuing the trial of this proceeding the Commission has determined that the complaint should be dismissed. Accordingly,

*It is ordered*, That the complaint in this proceeding be, and it hereby is, dismissed.

By the Commission, with Commissioner Elman concurring in the result.

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