

Consent order requiring a major manufacturer of industrial machinery and other products headquartered in Providence, R.I., to divest within one year its Aetna Bearing Co. Division and to refrain from acquiring any manufacturer of antifriction bearing assemblies for a period of ten years without prior Commission approval.

COMPLAINT

The Federal Trade Commission having reason to believe that Textron, Inc., a corporation subject to the jurisdiction of the Commission,

Complaint

77 F.T.C.

has acquired The Fafnir Bearing Company, in violation of Section 7 of the Clayton Act (15 U.S.C. Section 18), hereby issues this Complaint, pursuant to Section 11 of that Act stating its charges in that respect as follows:

I. Definitions

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

(a) Ball bearings are antifriction bearing assemblies consisting of an outer and inner race or upper and lower washers separated by balls as rolling elements.

(b) Radial ball bearings are ball bearings primarily designed to support load perpendicular to shaft axis.

(c) Thrust ball bearings are ball bearings primarily designed to support load parallel to shaft axis.

II. Textron Inc.

2. Textron Inc. (hereinafter "Textron"), the respondent herein, is a corporation organized and doing business under the laws of the State of Delaware with its principal office and place of business located at 10 Dorrance Street, Providence, Rhode Island.

3. Textron ranks among the 50 largest industrial corporations in the United States. In 1968, it had sales of \$1.7 billion, assets of \$892 million and net income of \$74 million.

4. Textron's growth has been achieved in large part since 1951 through mergers and acquisitions.

5. In 1963, Textron acquired Parkesburg-Aetna Corp., a producer of ball bearings among other products. In addition to its sales to distributors for the replacement market, Textron's Aetna Bearing Company Division is a substantial supplier of ball bearings to manufacturers of automotive equipment, farm machinery and general machinery equipment. In 1967, Textron shipped ball bearings having a value of over \$7.8 million, amounting to 1.6 percent of total industry shipments.

6. At all times relevant herein, Textron sold and shipped its products throughout the United States and was and is now engaged in commerce as "commerce" is defined in the Clayton Act.

III. The Fafnir Bearing Company

7. The Fafnir Bearing Company (hereinafter "Fafnir") was a corporation organized and doing business under the laws of the State

of Connecticut with its principal office and place of business located in New Britain, Connecticut.

8. Fafnir was a leading manufacturer of ball bearings, and sells to numerous industries including the automotive, farm machinery, machine tool, construction machinery, aircraft, and aerospace industries. In 1966, Fafnir had sales of \$113.8 million, assets of \$72.1 million, and net income of \$11.8 million. Its 1967 shipments of ball bearings totaled more than \$77 million representing 17.1 percent of the industry's shipments.

9. At all times relevant herein, Fafnir sold and shipped its products throughout the United States and engaged in commerce as "commerce" is defined in the Clayton Act.

IV. Trade and Commerce

10. Trade and commerce in the sale of ball bearings is substantial with 1967 shipments amounting to over \$453 million.

11. Concentration in the production and sale of ball bearings is high. In 1967, the four largest producers accounted for 63.4 percent of total industry shipments and the eight largest producers accounted for 80.3 percent of such shipments. Between 1963 and 1967, the number of ball bearing producers declined from 38 to 34, a decline of more than 10 percent.

12. Barriers to entry into the production of ball bearings are high. In addition to the high investment required for production machinery and equipment, highly specialized technology and manufacturing know-how is required. Further, satisfactory completion of lengthy qualification testing is often required by purchasers of ball bearings.

13. Acquisitions and mergers have significantly decreased the number of firms producing ball bearings. Since 1955 at least 11 ball bearing manufacturers have been acquired by firms already producing ball bearings. Seven of these acquisitions have occurred since 1961.

14. Given the existing high barriers to entry and the high concentration in the ball bearing industry, the most likely sources of increased competition are firms already in the industry which have both the capability and the incentive to expand their existing product line. The skills, technological know-how and plant facilities used in the production of one type of ball bearing can be utilized to produce other types of ball bearings.

15. Textron, through its Aetna Bearing Company Division, is the leading producer of thrust ball bearings which compete with radial ball bearings for use in automotive clutch release applications. Tex-

Complaint

77 F.T.C.

tron also is a significant producer of unground adapter ball bearings for use in mounted power transmission applications and is a significant producer of unground ball bearings mounted in idler pulleys and sprockets. Unground adapter ball bearings and unground ball bearings mounted in idler pulleys and sprockets compete with precision ball bearings in low speed and load applications.

16. Textron, prior to its acquisition of Fafnir, was one of the few firms with prospects of becoming a substantial producer of precision radial ball bearings.

17. Fafnir was the second largest producer of precision radial ball bearings and a leading producer of adapter ball bearings for use in mounted power transmission applications and ball bearings mounted in idler pulleys and sprockets. Fafnir possessed the technological know-how and the resources necessary to be a substantial producer of thrust ball bearings.

18. Textron is a significant purchaser of ball bearings. In 1967 its purchases of ball bearings totaled approximately \$4 million.

V. The Transaction

19. On or about January 3, 1968, Textron acquired the business and assets of Fafnir for a consideration of approximately \$184 million in Textron stock.

VI. Effects of the Acquisition

20. The effects of Textron's acquisition of Fafnir may be substantially to lessen competition or tend to create a monopoly in the manufacture and sale of ball bearings generally and in particular kinds of ball bearings throughout the United States in violation of Section 7 of the Clayton Act, as amended, in the following ways among others:

(a) Substantial actual and potential competition between Textron and Fafnir may be eliminated.

(b) Competing manufacturers of ball bearings may be foreclosed from a substantial segment of the market and may thereby be deprived of a fair opportunity to compete.

(c) Already high barriers to entry of new competition in the ball bearing industry may be heightened with the result that concentration may remain high.

(d) Additional acquisitions between ball bearing producers and ball bearing users may be encouraged.

VII. The Violation Charged

21. The acquisition by Textron of the assets of Fafnir constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Section 18).

STATEMENT OF COMMISSION

MAY 22, 1970

The Commission reconsidered the proposed consent agreement in light of the comments submitted and decided to accept the agreement in the manner and form proposed. The consensus of the public comments was that the proposed consent order was inadequate in that it represented a rejection of the "leading company approach" to conglomerate mergers recommended in the FTC staff *Economic Report on Corporate Mergers*. That approach is that acquisitions by large diversified firms of leading firms in concentrated industries should be challenged.

The Commission has determined that under the particular circumstances presented, it probably would not have challenged respondent's acquisition of Fafnir, absent respondent's ownership of Aetna. While the Commission rejects any *per se* rule of "leading company" illegality, it looks most carefully at leading firm acquisitions by conglomerates into a concentrated industry, and stands ready to challenge these acquisitions where they may tend to eliminate potential competition, create reciprocity or cross-subsidization opportunities, or result in full-line forcing, predatory pricing, tie-in sales, or other anticompetitive practices.

Respondent, through Aetna, was a small factor in the ball bearing industry, producing different, though related types of ball bearings than those produced by Fafnir. Commission concluded that the acquisition of Fafnir did not eliminate potential competition, since Textron absent its acquisition of Fafnir and without its position in Aetna which it is now required to divest, would not have been considered a likely potential entrant through internal expansion into Fafnir's ball bearing markets.

A review of respondent's overall purchase requirements indicates that it has little or no ability to force its bearing customers to deal with it in a systematized reciprocal manner. Moreover, there is no evidence to indicate that respondent will confer additional power to

Decision and Order

77 F.T.C.

subsidize Fafnir's bearing operations in the light of the latter's profitable operations.

The Commission reasoned further that in the circumstances of this case, it was more in the public interest to obtain an order requiring prompt divestiture of Aetna, in that such divestiture would not only reinstate the competition that formerly existed between Aetna and Fafnir, but would also recreate the opportunity for the new owners of Aetna to expand internally its product line to compete more directly with Fafnir.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the acquisition of The Fafnir Bearing Company, a corporation, hereinafter sometimes referred to as Fafnir, by Textron Inc., a corporation, hereinafter sometimes referred to as respondent, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Restraining 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 has reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon provisionally accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, and having received and duly considered comments from several interested members of the public, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Textron Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of

655

Decision and Order

Delaware, with its office and principal place of business located at 10 Dorrance Street, Providence, Rhode Island.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I

It is ordered, That respondent, Textron Inc., and its officers, directors, agents, representatives, and employees shall, within one (1) year from the effective date of this order, divest itself absolutely and in good faith, subject to the prior approval of the Federal Trade Commission, of all the assets, properties, rights and privileges, tangible or intangible, including but not limited to all properties, plants, machinery, equipment, raw material reserves, patents, trade names, trademarks, contract rights, marketing organizations, and good will, acquired by said respondent as a result of its acquisition of the Aetna Bearing Company, together with all additions and improvements thereto, so as to assure that said company is reestablished as an effective, viable competitor in the production, distribution and sale of antifriction bearings.

II

It is further ordered, That, if respondent is unable to sell or dispose of Aetna Bearing Company for cash, nothing in this order shall be deemed to prohibit respondent from retaining, accepting and enforcing in good faith any security interest therein, not to exceed five years in duration, for the sole purpose of securing to respondent full payment of the price, with interest, at which Aetna Bearing Company is sold or disposed of; *Provided, however*, That if after a good faith divestiture of Aetna Bearing Company pursuant to this order, the buyer fails to perform his obligations and respondent regains ownership or control of Aetna Bearing Company by enforcement of any security interest therein, respondent shall redinvest such company within one year in the same manner as provided for herein.

III

It is further ordered, That pending divestiture, respondent shall not make any changes, other than in the ordinary course of business, or permit any deterioration in any of the plants, machinery, build-

ings, equipment or other property or assets of whatever description of its Aetna Bearing Company Division which may impair said Division's capacity for the manufacture, distribution or sale of antifriction bearings.

IV

It is further ordered, That the divestiture required by Paragraph I of this order shall not be effected, directly or indirectly, to anyone who, subsequent to such divestiture, is an officer, director, employee, or agent of, or otherwise under the control or influence of respondent, or who owns or controls, directly or indirectly, more than one (1) percent of the outstanding stock of respondent.

V

It is further ordered, That, pending divestiture, respondent shall cease and desist from acquiring, directly or indirectly, the whole or any part of the stock, share capital, or assets (other than products, machinery and equipment sold in the ordinary course of business and non-exclusive patent and know-how licenses) of any concern engaged in the manufacture and/or distribution of antifriction bearings in the United States.

VI

It is further ordered, That, for a period commencing upon the effective date of this order and continuing for a period of ten (10) years from and after the date of completing the divestiture required by this order, respondent shall cease and desist from acquiring, directly or indirectly, without prior approval by the Federal Trade Commission, the whole or any part of the stock, share capital, or assets (other than products, machinery and equipment sold in the normal course of business and non-exclusive patent and know-how licenses) of any domestic concern, corporate or noncorporate, engaged in the manufacture and/or distribution of antifriction bearings in the United States, or any foreign concern, corporate or noncorporate, engaged in the manufacture and/or distribution of antifriction bearings whose sales in the United States in the five years preceding the acquisition exceeded an average of \$500,000 per year. (For the purposes of this order a concern will be deemed to be engaged in the distribution of antifriction bearings if it derives 50 percent or more of its total annual sale from such activity.)

This prohibition on acquisitions shall include, but not be confined to, the entering into of any arrangement by respondent pursuant to which respondent acquires the market share, in whole or in part, of any concern, (a) through such concern discontinuing manufacturing or selling antifriction bearings under a brand name or label it owns and thereafter manufacturing or selling any of said products under any of respondent's brand names or labels, or (b) by reason of such concern discontinuing manufacturing antifriction bearings and thereafter transferring to respondent customer lists or any other way making available to respondent access to customers or customer accounts.

VII

It is further ordered, That commencing upon the effective date of this order and continuing for a period to ten (10) years from and after the date of completing the divestiture required by this order, respondent shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, without the prior approval of the Federal Trade Commission, the whole or any part of the stock, share capital or assets (other than products, machinery and equipment sold in the ordinary course of business and non-exclusive patent and known-how licenses) of any domestic concern, corporate or noncorporate, whose purchases of precision ball bearings (ABEC-1 and above) for use in original equipment manufacture in any of the immediately preceding three years exceeded one million dollars (\$1,000,000).

VIII

It is further ordered, That respondent shall, within sixty (60) days after the effective date of this order, and every sixty (60) days thereafter, until respondent has fully complied with Paragraph I of this order, and annually thereafter, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which respondent intends to comply, is complying, or has complied with this order. All compliance reports shall include, in addition to such other information and documentation as may hereafter be required, without limitation, a summary of all contracts and negotiations with any parties concerning divestiture of the specified assets and properties, the identity of all such parties and copies of all written communications to and from such parties.

Complaint

77 F.T.C.

IN THE MATTER OF

CAMPBEL COUP COMPANY, ET AL.

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

Docket C-1741. Complaint, May 25, 1970—Decision, May 25, 1970

Consent order requiring a major soup company with headquarters in Camden, N.J., and its New York City advertising agency to cease falsely advertising soup and other food products by the deceptive use of experiments or demonstrations such as a TV commercial in which marbles were placed in a bowl of soup in order to increase the apparent abundance of solid ingredients. The order also denies the request of SOUP, Inc. (Students Opposing Unfair Practices), for further intervention in the case, but grants SOUP's request for a free copy of the transcript of the oral argument heard February 5, 1970.

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 Campbell Soup Company, a corporation, and Batten, Barton, Durstine & Osborn, Inc., a corporation, hereinafter referred to as respondents, have 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 Campbell Soup Company is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 375 Memorial Avenue, in the city of Camden, State of New Jersey.

Respondent Batten, Barton, Durstine & Osborn, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 383 Madison Avenue, in the city of New York, State of New York.

PAR. 2. Respondent Campbell Soup Company is now, and for some time last past has engaged in the sale and distribution of Campbell's canned soups.

Respondent Batten, Barton, Durstine & Osborn, Inc., is now and for some time last past has been, an advertising agency of Campbell Soup Company, and now prepares and places, and for some time