

a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained herein.

IN THE MATTER OF
THE GATES RUBBER COMPANY

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

Docket C-2137. Complaint, Jan. 21, 1972—Decision, Jan. 21, 1972

Consent order requiring the nation's largest manufacturer of rubber belts and hoses with headquarters in Denver, Colo., to divest itself within one year of all assets and properties of Porter's Nephi Works located at Nephi, Utah, to an independent party as a going business and cease and desist for a period of five years from employing any management or sales personnel of the divested company.

COMPLAINT

The Federal Trade Commission, having reason to believe that the Gates Rubber Company, a Colorado corporation, subject to the jurisdiction of the Commission, has acquired all of the assets of the Nephi, Utah Works of H. K. Porter Company, Inc. in violation of Section 7 of the Clayton Act, as amended (Title 15 U.S.C. Section 18), hereby issues this Complaint stating its charges in those respects as follows:

I Definitions

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

1. "Porter's Nephi Works" means all assets owned by the Ther-

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moid Division of H. K. Porter Company, Inc., located at Nephi, Utah, and acquired by respondent by contract of March 16, 1970.

II The Acquiring Company

2. The Gates Rubber Company (hereafter "Gates"), is a corporation organized and doing business under the laws of the State of Colorado, with its principal office and place of business located at 999 South Broadway, Denver, Colorado. With sales from diverse operations of about \$469 million during its fiscal year ended Feb. 28, 1970, Gates, although still family-owned, is comparable in size to the 227th largest publicly-owned industrial corporation. It is the nation's sixth largest rubber products manufacturer and the largest manufacturer of rubber belts and hoses. At all times relevant hereto Gates was engaged in interstate commerce within the meaning of Section 7 of the Clayton Act, as amended.

III The Acquired Company

3. H. K. Porter Company, Inc., (hereafter "Porter") is a corporation organized and doing business under the laws of the State of Delaware, with its principal office in the Porter Building, Pittsburgh, Pennsylvania. With sales of about \$290 million in 1969 Porter was 324th in rank among the 500 largest U. S. industrial corporations. It is a diversified manufacturer with major interests in rubber goods, steel, electrical equipment, automotive parts and various other products. Its rubber business is carried on by its Thermoid Division. The Thermoid plant at Nephi, Utah, with 1969 sales of about \$7.9 million, made all of that Division's rubber belts and belting (non-flat) and much of its rubber hose and hosing. At all times relevant hereto Porter was engaged in interstate commerce within the meaning of Section 7 of the Clayton Act, as amended.

IV The Acquisition

4. On or about March 16, 1970 Gates acquired Porter's Nephi Works.

V Trade and Commerce

5. Rubber belts are used principally for the transmission of motive power, either for stationary industrial machinery ("v-belts") or for automotive vehicles ("fan belts"). Rubber hoses are used to transmit fluid, air or gases both in industrial machinery and in automotive vehicles (heater hose and radiator hose). All the foregoing kinds of

belts and hoses are made from similar raw materials by substantially the same firms, although by different manufacturing processes. Belts and hoses destined for industrial use are generally sold to machinery manufacturers for original equipment and through industrial equipment distributors for replacement use, whereas those destined for automotive use are generally sold to vehicle makers for original equipment and through automotive parts distributors for replacement use.

6. Total shipments by U. S. manufacturers of rubber belts and belting (non-flat) in 1967 were valued at \$116 million. Total shipments by U. S. manufacturers of rubber hose and hosing in 1967 were valued at \$393 million. Both markets are concentrated and in each Gates plays a leading role. Its share of the 1967 belt and belting (non-flat) market was about 45 percent and its share of the hose and hosing market was about 16 percent. Thermoid's shares were, respectively, 2 percent and 3 percent.

7. Rubber belts and hoses for automotive replacement use constitute a distinct and significant market, virtually dominated by Gates. Of all such sales in 1967, 93 percent was in the hands of 4 competitors. In this oligopoly, Gates was the near dominant power, with well over 50 percent of the market, while Thermoid ranked fourth with about 4 percent.

VI Competitive Effects

8. Gates' acquisition of Porter's Nephi Works may tend substantially to lessen competition or create a monopoly in the nationwide manufacture and sale of (1) all rubber belts and belting (non-flat), (2) rubber hose and hosing, and, particularly, (3) rubber belts and hoses sold for automotive replacement use, in the following ways, among others:

(a) Substantial actual competition by Thermoid with Gates and with others has been eliminated.

(b) The oligopoly power hitherto wielded in the replacement automotive belt and hose market by four firms will now be wielded by three only and Gates' power to dominate the oligopoly has been further augmented and entrenched.

(c) Entry or growth of new competition will be further inhibited.

VII Violation

9. By reason of the foregoing Gates' acquisition of Porter's Nephi Works constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. §18).

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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 Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of Section 7 of the Clayton Act, as amended;

Respondent, its attorney and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 said 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 respondent has violated the said Acts, 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, and various comments having been received and the Commission having duly considered them and the consent order agreement having been amended in minor respects in accordance with the tenor thereof and the Commission having ordered the agreement in final form to be once again placed on the public record for an additional period of thirty (30) days; 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, the Gates Rubber Company, is a corporation which has its executive offices and principal place of business at 999 South Broadway, Denver, Colorado.

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

For purposes of this order, "respondent" means the Gates Rubber Company, its subsidiaries, successors and assigns to any substantial portion of its assets; and "Porter's Nephi Works" means all assets acquired by respondent from H. K. Porter Co., Inc., by contract of

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March 16, 1970, which is hereby referred to, including, but not restrictively, all fixed assets, finished goods, work in process, supplies, prepaid items, trademarks, trade names, patents, patent applications and licenses, customer lists, specifications, drawings, formulae, inventions, trade secrets, and books and records applicable to operations of the acquired business and, where appropriate, as in the case of inventory, a substantial equivalent of any such assets as may no longer be in existence or in respondent's possession.

I

It is ordered, That respondent as soon as possible, and in any event within twelve (12) months from the effective date of this order, shall divest itself of Porter's Nephi Works, together with all additions and improvements thereto, absolutely and in good faith to a purchaser approved in advance by the Federal Trade Commission so as to transfer Porter's Nephi Works as a going business and a viable competitive entity in the markets for those products it was manufacturing and distributing when acquired by respondent.

II

It is further ordered, That none of the assets described in the preamble to this order shall be sold or transferred, directly or indirectly, to any person who is at the time or has been at any time during the one year period preceding or the one year period following the effective date of this order an officer, director, employee, or agent of, or under the control or direction of, respondent or any of respondent's subsidiary or affiliated corporations, or any person who owns or controls or has owned or controlled, directly or indirectly, more than one percent (1%) of the outstanding capital shares of respondent.

III

It is further ordered, That pending divestiture respondent shall not cause or permit any deterioration in any of the assets to be divested which may impair their present capacity or market value.

IV

It is further ordered, That respondent shall do everything within its power to assure that the business operations to be divested will be properly staffed and, in particular, that all available means will be used by respondent to assist the acquirer in retaining, rehiring or replacing management and such other personnel including sales

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representatives, as were employed to operate the business when it was acquired by respondent; and that respondent shall terminate its own employment of, and will cease and desist for a period of five (5) years from the date of this order from the hiring of, any management or other personnel, including sales representatives, in the employ of H. K. Porter Co., Inc. (Thermoid Div.) in capacities related to Porter's Nephi Works at any time within the year preceding March 16, 1970.

v

It is further ordered, That commencing thirty (30) days after the effective date of divestiture, and continuing for a period ending three (3) years from and after the date of completing the divestiture required by this order, respondent shall cease and desist from the sale of rubber belts, rubber belting, rubber hose and rubber hosing to any firm which purchased \$1,000 or more of any such products manufactured by Porter's Nephi Works, excluding conveyor or flat transmission belting, at any time during the last full fiscal year before Nephi's acquisition by respondent: *Provided*, nevertheless, that nothing herein contained shall prevent respondent from soliciting the purchase of any such products by any firm which bought \$1,000 or more of such products, excluding conveyor or flat transmission belting, from respondent both during the fiscal year before said acquisition and the next fiscal year after said acquisition. A list of such firms to which the foregoing provision applies, contained in a certain letter of representation, as amended, from the Gates Rubber Company to the Federal Trade Commission and accepted by the Commission's staff, shall be presumed correct, subject to subsequent correction in the event of any mistakes therein.

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It is further ordered, That commencing on 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 entering into any arrangement by which respondent acquires, directly or indirectly, through subsidiaries, joint ventures or otherwise, without prior approval of the Federal Trade Commission, the whole or any part of the stock, share capital or assets or any warrant, option or other right to acquire any share capital or assets or other equity interest or right to participate in earnings of any concern, corporate or noncorporate, engaged in domestic commerce, whether interstate or intrastate, and in the manu-

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facture, sale or distribution of rubber belts, rubber belting, rubber hose or rubber hosing; nor shall respondent enter into any arrangement with any such concern by which respondent obtains the market share, in whole or in part, of such concern in the above-mentioned product lines.

VII

It is further ordered, That respondent shall within ninety (90) days from the effective date of this order and every ninety (90) days thereafter until respondent has fully complied with the provisions of Paragraph I of this order, and every one hundred and eighty (180) days until respondent has fully complied with the provisions of Paragraph V of this order, submit to the Federal Trade Commission a detailed written report of its actions, plans and progress in complying with Paragraphs I through V of this order and fulfilling their objectives.

VIII

It is further ordered, That respondent shall notify the Federal Trade Commission at least thirty (30) days in advance of any proposed change in respondent's constitution or operations which might affect any of the obligations arising out of this order.

IN THE MATTER OF

REVERE CHEMICAL CORPORATION, ET AL.

CONSENT ORDER, ETC. IN REGARD TO THE ALLEGED VIOLATIONS