

IN THE MATTER OF
EATON YALE & TOWNE, INC. AND ITS SUCCESSOR IN
NAME, EATON CORPORATION

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

Docket 8826. Complaint, Dec. 17, 1970-Decision, May 15, 1975

Consent order requiring a Cleveland, Ohio, manufacturer of engine valves and valve lifters, among other things to divest itself of the assets acquired in 1969, of the McQuay-Norris Manufacturing Co. within 24 months. The order further requires respondent to supply, for a period of two years, on reasonable terms and conditions, any or all requirements the divested firm may have for automotive engine valves, valve lifters, camshaft bearings, thermostats and tire valves.

Appearances

For the Commission: *K. Keith Thurman, James C. Egan, Jr. and James C. Hamill, Jr.*

For the respondent: *John T. Loughlin, Victor E. Grimm, Robert T. Johnson, Jr. and William R. Carney, Bell, Boyd, Lloyd, Haddad & Burns, Chicago, Ill.*

COMPLAINT

The Federal Trade Commission having reason to believe that Eaton Yale & Towne Inc., a corporation subject to the jurisdiction of the Commission, has acquired the stock of McQuay-Norris Manufacturing Co., a corporation, in violation of Section 7 of the Clayton Act (15 U.S.C. §18), hereby issues this Complaint, pursuant to Section 11 of that Act (15 U.S.C. §21), stating its charges in that respect as follows:

I. Definitions

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

(a) "Automotive valve train products" are defined as engine valves, valve springs, valve guides, valve lifters, valve seals, valve keepers, valve seat inserts, push rods, rocker arms and parts, roto caps, roto assemblies and camshafts.

(b) "Automotive engine parts" are valve train products, engine sleeve bearings, pistons and pins, piston rings, and water pumps.

(c) A "reboxer" is defined as a manufacturer of one or more lines of automotive parts who purchases for resale under its own brand, automotive parts that it does not manufacture. A reboxer competes at the manufacturers' functional level.

(d) The "independent aftermarket" is defined to include all sales by manufacturers of automotive parts direct to wholesalers or retailers for replacement use. It excludes sales by vehicle manufacturers or engine manufacturers directly to vehicle dealers.

II. Eaton Yale & Towne Inc.

2. Respondent Eaton Yale & Towne Inc., (hereafter "EYT"), is now, and was at the time of merger, an Ohio corporation with its principal office and place of business located at 100 Erieview Plaza, Cleveland, Ohio.

3. In 1968, EYT had sales of \$889.8 million, and assets of \$622.7 million. In that year it was the 111th largest industrial corporation in

the nation. In 1969, its sales exceeded \$1 billion and assets increased to \$735.5 million which made it the 110th largest industrial corporation.

4. EYT's four most important product lines, which contributed an aggregate of approximately 63 percent of net sales during 1968 are (a) Motor Vehicle Parts and Accessories (29 percent); (b) Industrial Trucks, Tractors, Trailers and Stackers (15 percent); (c) Miscellaneous Machinery (10 percent); and (d) Mechanical Power Transmission Equipment (9 percent).

5. Among the motor vehicle parts and accessories EYT manufactures are engine valves, hydraulic valve lifters and valve seat inserts. EYT is one of the nation's two largest producers of engine valves and valve lifters. It is one of only two companies manufacturing sodium filled engine valves in the United States. EYT's valve division is one of only four basic manufacturers of engine valves for the automotive replacement market (hereafter sometimes "aftermarket"), excluding engine manufacturers. The other three engine valve manufacturers sell directly in the independent aftermarket, whereas, prior to acquiring McQuay, EYT did not sell automotive valve train products directly in the independent aftermarket. EYT is also a substantial supplier of engine valves to the automotive original equipment market. In 1967, EYT shipped \$27.8 million of engine valves, accounting for 34.4 percent of total industry shipments of engine valves for passenger cars, trucks, and buses. EYT's shipments in 1967 of engine valves for replacement use were in excess of \$1.6 million, accounting for over 20 percent of such shipments.

6. EYT, through its Dole Valve Division, is the leading seller of automotive thermostats in the independent aftermarket, accounting for 23 percent of 1967 sales. EYT also sells several other product lines in the independent aftermarket including tire repair items, air conditioners and parts, and filler caps.

7. By virtue of its position as a substantial supplier of engine valves to the original equipment market, its reputation as a manufacturer of high quality engine parts, its financial resources, and its knowledge of the aftermarket gained through the sale of several other products in the independent aftermarket, EYT was, prior to Oct. 31, 1969, one of the most likely potential entrants into the sale of engine valves and other valve train products directly in the independent aftermarket.

8. By virtue of its position as a likely entrant into the sale of valve train products in the independent aftermarket, EYT was also one of the most likely potential entrants into the sale of automotive engine parts other than valve train products in the independent aftermarket.

9. At all times relevant herein, EYT 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. McQuay-Norris Manufacturing Co.

10. Prior to its merger into EYT on Oct. 31, 1969, McQuay-Norris Manufacturing Co. (hereafter "McQuay") was a Delaware corporation with its principal office and place of business located at 2320 Marconi Av., St. Louis, Mo.

11. McQuay was engaged principally as a manufacturer and rebaxter in the sale of engine, chassis and automatic transmission parts for automobiles, truck, tractors and industrial uses. Substantial sales were made to original equipment manufacturers, but the greater part of McQuay's sales were made in the independent aftermarket. In 1968, McQuay had sales of \$32.9 million and assets of \$22.1 million.

12. McQuay was a leading seller of engine parts in the independent aftermarket. In 1967 it sold \$13.3 million of engine parts in the independent aftermarket. In that year it accounted for 10.7 percent of the sale of engine parts in the independent aftermarket and was the 5th largest seller of such parts in the independent aftermarket.

13. McQuay was a leading seller in the independent aftermarket of the 5 product lines which comprise the engine parts market. In 1967, McQuay's sales of valve train products in the aftermarket were \$3.6 million, which represented approximately 6 percent of the total aftermarket sales of valve train products. In that year McQuay was the third largest seller of valve train products in the 1967 independent aftermarket. McQuay accounted for 11 percent of total valve train product sales in the independent aftermarket.

14. In 1967, McQuay was a substantial manufacturer and seller of automotive engine parts in the independent aftermarket. With sales of \$1.7 million, it ranked 5th in the country in sales of piston rings; with sales of \$3.9 million, 4th in the sale of engine sleeve bearings; with sales of \$2.9 million, 3rd in the sale of water pumps; and with sales of \$1.1 million, 5th in the sale of pistons and pins.

15. McQuay as a rebaxter was a significant purchaser of automotive engine valves and valve lifters. In 1967, its purchases of automotive engine valves were approximately \$1 million and valve lifters were approximately \$.3 million. The purchases of automotive engine valves represented 12.3 percent of all shipments made by automotive engine valve manufacturers for replacement use.

16. At all times relevant herein McQuay 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

17. The aftermarket for automotive engine parts consists of two submarkets: sales by engine manufacturers to vehicle dealers and sales by engine manufacturers and other manufacturers or reboxers to distributors, wholesalers, rebuilders and direct buying retailers. Engine manufacturers sell replacement engine parts almost entirely to vehicle dealers. Reboxers and manufacturers of engine parts, other than engine manufacturers, account for almost all the sales in the independent aftermarket and do not sell any engine parts directly to vehicle dealers.

18. The sale of automotive engine parts in the independent aftermarket is substantial, with 1967 shipments of such parts amounting to \$124.4 million.

19. Sales of each of the product lines which comprise the sale of engine parts in the independent aftermarket are also substantial. In 1967, sales in the independent aftermarket of valve train products were in excess of \$32 million, sales of piston rings were \$30.6 million, sales of engine sleeve bearings were \$33.2 million, sales of water pumps were \$15.6 million and sales of pistons and pins were \$14.2 million.

20. Sales of each of the five automotive engine parts product lines in the aftermarket exceeded sales of each such product lines in the independent aftermarket. In 1967, total sales of valve train products in the entire aftermarket were in excess of \$58.5 million compared to sales in excess of \$32 million in the independent aftermarket.

21. Concentration in the sale of engine parts in the independent aftermarket is high. In 1967, the 5 largest sellers of engine parts in the independent aftermarket accounted for 69 percent of total sales in that market.

22. Concentration within each of the five product lines comprising the engine parts market is also high. For example, in 1967, the four largest marketers of valve train products accounted for 64 percent of independent aftermarket sales of such products.

23. Entry into the sale of engine parts in the independent aftermarket of any of the five product lines comprising the engine parts market is difficult. A successful manufacturer or reboxer must possess a reputation as a manufacturer of high quality engine parts, must have ample financial resources and must have knowledge of how to sell automotive parts in the independent aftermarket.

24. Engine valves represent a significant portion of replacement engine parts sales. In 1967 shipments of engine valves for replacement use totalled \$8.1 million, representing 10 percent of the \$80.9 million total shipments of engine valves for passenger cars, trucks and buses.

25. Concentration in the production of engine valves is very high. In 1967, the two largest producers of engine valves accounted for over 80 percent of shipments both for replacement use and total shipments.

26. The number of manufacturers and reboxers of engine valves has remained constant for over 15 years, except that one company recently discontinued producing engine valves in the United States.

27. Engine valves represent a necessary product in the sale of engine parts in the independent aftermarket. Engine valves account for approximately 50 percent of total independent aftermarket sales of valve train products, with another 25 percent of the independent aftermarket sales of valve train products being accounted for by valve lifters. Without selling engine valves it is most difficult to compete successfully in the sale of engine parts or valve train products in the independent aftermarket.

V. The Transaction

28. On or about October 31, 1969, EYT acquired McQuay by merger of McQuay into EYT through an exchange for each share of McQuay's common stock of 0.8 common share of EYT. At the time of the acquisition of EYT stock exchanged for McQuay was valued at approximately \$25 million.

VI. Effect of the Acquisition

29. The effects of the acquisition of McQuay by EYT may be substantially to lessen competition or tend to create a monopoly in the sale of automotive engine parts, automotive engine valves and other valve train products throughout the United States in violation of Section 7 of the Clayton Act, as amended, in the following ways among others:

(a) Substantial potential competition between EYT and McQuay in the sale of automotive engine parts in the independent aftermarket has been eliminated.

(b) Substantial potential competition between EYT and McQuay in the sale of automotive valve train products in the independent aftermarket has been eliminated.

(c) Entry of new manufacturers or reboxers into the sale of automotive engine parts in the independent aftermarket may be inhibited or prevented.

(d) Entry of new manufacturers or reboxers into the sale of automotive valve train products in the independent aftermarket may be inhibited or prevented.

(e) Competing manufacturers of automotive engine valves may be

foreclosed from access to a substantial segment of the independent aftermarket and may thereby be deprived of a fair opportunity to compete.

(f) Competing reboxers of automotive engine valves may be foreclosed from access to a substantial source of supply of engine valves, especially in periods of short supply.

(g) Competing reboxers of automotive engine valves may be disadvantaged in competing in the sale of automotive engine parts in the independent aftermarket by the potential foreclosure of access to a substantial source of supply of automotive engine valves.

VII. The Violation Charged

30. The acquisition of McQuay by EYT constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Section 18).

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereto with violation of Section 7 of the Clayton Act, as amended, and the respondent having been served with a copy of that complaint, together with a proposed form of order; 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 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 withdrawn this matter from adjudication in accordance with Section 2.34(d) of its rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent Eaton Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located in the city of Cleveland, State of Ohio.

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 Eaton Corporation, formerly known as Eaton Yale & Towne, Inc., (hereinafter "Eaton") within a period not exceeding twenty-four (24) months from the effective date of this order, shall divest, by sale, or by public offering or spin-off of the stock of a new corporation formed for such purpose, subject to prior approval of the Federal Trade Commission, all assets, properties, rights and privileges, tangible and intangible, including but not limited to, all plants, equipment, machinery, inventory, customer lists, trade names, trademarks and good will, acquired by Eaton as a result of its merger with McQuay-Norris Manufacturing Co., (hereinafter "McQuay") together with all additions and improvements to such assets and properties, but excluding:

(A) The plant, machinery, equipment, and other fixed assets and the business of the former Dura-Bond operation of McQuay, which is now a part of the special products division of Eaton; and

(B) The plant, machinery, equipment, and other fixed assets and the business of the former electric products division of McQuay, which is now a part of the electric products division of Eaton.

In the event that a new corporation is established as provided herein, respondent shall make available to such new corporation adequate administrative, sales and service personnel to carry on the business to be transferred to the new corporation.

II

It is further ordered, That none of the assets, properties, rights or privileges to be divested, as described in the foregoing paragraph of this order, shall be sold or transferred, directly or indirectly, to any person who is at the time of the divestiture an officer, director, employee, or agent of, or under the control or direction of, respondent or any of respondent's subsidiary or affiliate corporations, or anyone who owns or controls, directly or indirectly, more than one (1) percent of the outstanding shares of common stock of Eaton, or to anyone who is not approved in advance by the Federal Trade Commission.

III

If respondent divests the assets, properties, rights and privileges, described in Paragraph I of this order, to a new corporation or corporations, the stock of each of which is wholly owned by the Eaton Corporation, and if respondent then distributes all the stock in said corporation or corporations to the stockholders of the Eaton Corporation, in proportion to their holdings of the Eaton Corporation stock, then Paragraph II of this order shall be inapplicable, and the following Paragraphs IV and V shall take force and effect in its stead.

IV

No person who is an officer, director, or executive employee of the Eaton Corporation, or who owns or controls, directly or indirectly, more than 1 percent of the stock of The Eaton Corporation, shall be an officer, director or executive employee of any new corporation or corporations described in Paragraph III, or shall own or control, directly or indirectly, more than 1 percent of the stock of any new corporation or corporations described in Paragraph III.

V

Any person who must sell or dispose of a stock interest in the Eaton Corporation or the new corporation or corporations, described in Paragraph III, in order to comply with Paragraph IV of this order may do so within six (6) months after the date on which distribution of the stock of the said corporation or corporations is made to stockholders of the Eaton Corporation.

VI

It is further ordered, That, pending divestiture, respondent shall not make or permit any deterioration in any of the plants, machinery, buildings, equipment or other property or assets of the company to be divested which may impair its present capacity or market value.

VII

It is further ordered, That respondent shall grant to the purchaser of the assets, or to the new company referred to in Part I of this order, the right to purchase, on reasonable terms and conditions no less favorable than those offered to any other customers performing the same distribution functions in the automotive aftermarket, for a period of two (2) years from the date of divestiture as provided in Part I of this order, or for any part of same two (2) year period, all or any part of

the requirements of said purchaser of automotive engine valves, valve lifters, camshaft bearings, thermostats and tire valves, subject to the capacity of respondent to fulfill such requirements.

VIII

It is further ordered, That, pending divestiture, and for five (5) years from the date of divestiture as provided in Part I of this order, respondent shall not acquire, directly or indirectly, without the prior approval of the Commission, the share capital or assets (other than products acquired for use or resale in the ordinary course of respondent's business, or other than the acquisition by respondent of the share capital or assets of any corporation not organized in the United States of which respondent owns more than 50 percent of the issued and outstanding share capital as of the effective date of this order) of any corporation which operates an automotive aftermarket distribution organization with annual sales of automotive engine parts within the automotive aftermarket in the United States in excess of \$2,000,000; provided that nothing in this paragraph shall prohibit respondent from acquiring the share capital or assets of any corporation engaged at the time in the importation of foreign automotive engine parts into the United States.

No acquisition made by respondent shall be deemed immune or exempt from the antitrust laws by reason of anything contained in this order.

IX

It is further ordered, That respondent shall, within six (6) months after the effective date of this order, and every six (6) months thereafter, until respondent has fully complied with Part I of this order, submit to the Federal Trade Commission a detailed written report of its actions, plans and progress in complying with the provisions of Part I of the order.

With respect to Part VIII of this order, respondent shall, on the first anniversary date of the divestiture provided for in Part I of this order and on each anniversary date thereafter, to and including the fifth anniversary date, submit a report, in writing, setting forth in detail the manner and form in which respondent intends to comply, is complying and has complied with Part VIII of this order.

X

It is further ordered, That respondent notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in

the corporate respondent which may affect compliance obligations arising out of the order, such as dissolution, assignments or sale