

IN THE MATTER OF
KAISER STEEL CORPORATION

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

Docket No. 8878. Complaint, Mar. 3, 1972-Decision, Aug. 27, 1975

Consent order requiring an Oakland, Calif., steel company, among other things to transfer the business of MSL Tube, acquired from MSL Industries, Inc., to a wholly-owned subsidiary, Kaiser Steel Tubing, Inc., whose records must be audited annually by an independent public accountant.

Appearances

For the Commission: *Stephen Miller, Harold J. Lamboley, D. Kenneth Kaplan and Perry W. Winston.*

For the respondents: *Wilmer, Cutler & Pickering, Wash., D.C. and Raymond Haile, Oakland, Calif.*

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent Kaiser Steel Corporation, a corporation, has violated Section 7 of the Clayton Act as amended, (15 U.S.C. §18) and that a proceeding in respect thereof would be in the public interest, issues its complaint pursuant to Section 11 of the Clayton Act, (15 U.S.C. §22) stating its charges as follows:

I. Definitions

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

(a). Electric resistance welded mechanical steel tubing denotes tubing formed from flat-rolled steel into solid-wall tubing in an electric resistance welded tube mill. It can be made from hot-rolled, cold-rolled or galvanized steel and may be in a round, square, rectangular or a special shape form. It includes structural tubing used in highway and building construction and, in smaller sizes for such applications as the manufacture of furniture, bicycles and lawn mowers. Electric resistance welded steel tubing is used for a wide variety of mechanical and structural purposes as opposed to pressure tubing which is used for the conduction of fluids and/or gases under pressure.

(b). Eleven Western States include the States of California, Oregon, Washington, Arizona, New Mexico, Idaho, Utah, Montana, Wyoming, Colorado and Texas.

II. Respondent Kaiser Steel Corporation

2. Kaiser Steel Corporation (hereafter "Kaiser") is a corporation organized and existing under the laws of the State of Nevada, with its principal office and place of business at 300 Lakeside Dr., Oakland, Calif.

3. Kaiser's business is conducted through three divisions: Resources, Steel and Metal Products. In addition to being the nation's tenth largest steel producer, it is the biggest steel producer in the West. In recent years, Kaiser has become a major world-wide developer of basic resources, principally iron ore, iron ore pellets and high-quality coking coal. Its primary marketing area is the seven western states.

4. For its fiscal year ending Dec. 31, 1969, Kaiser had net sales of \$420.8 million, net earnings of \$25.7 million, and total assets of \$643.5 million.

5. At all times relevant herein, Kaiser sold and shipped, and is now selling and shipping products in interstate commerce throughout the United States; hence, Kaiser was, at the time of the acquisition challenged herein, and is now, engaged in commerce as "commerce" is defined in the Clayton Act.

III. Acquired Assets

6. MSL Industries, Inc. (hereafter "MSL") is a corporation organized and existing under the laws of the State of Minnesota with its principal office and place of business in Chicago, Ill. Prior to Mar. 31, 1970, MSL Tubing and Steel Co., (hereafter "MSL Tube") was an operating division of MSL, consisting of land, buildings and equipment located in Vernon, Calif. Prior to Mar. 31, 1970, MSL Realty, a Delaware corporation, organized to do business in California, was a wholly-owned subsidiary of MSL.

7. At the time of its acquisition, MSL Tube was the West Coast's largest manufacturer of electric resistance welded mechanical steel tubing. In addition, MSL Tube processed and distributed secondary sheet steel and slit coil products. The geographic sales area of MSL Tube's products included primarily the States of California, Oregon, Washington, Arizona, New Mexico, Idaho, Utah, Montana, Wyoming, Colorado and Texas. MSL Realty's assets included land leased to MSL Tube.

8. For its fiscal year ending Dec. 31, 1969, MSL had net sales of \$131.4 million, net earnings of \$304,000, and total assets of \$110.8 million. In 1969, MSL Tube had net sales of \$12.8 million, net earnings of \$1.4 million and total assets of \$8.2 million.

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

IV. Acquisition

10. On Mar. 31, 1970, Kaiser acquired the properties, assets and facilities comprising MSL's west coast tube manufacturing business located in Vernon, Calif., and all of the outstanding common stock of MSL Realty for \$10.4 million.

V. Trade and Commerce

11. The manufacture of electric resistance welded mechanical steel tubing entails feeding a width of strip steel into a welding mill where a series of special rolls form the flat steel into a tubular shape. The butted edges are then electrically welded under heat and pressure. Steel, the primary ingredient in the manufacture of electric resistance welded mechanical steel tubing, represents between 65 percent and 90 percent of the total cost of manufacturing the product.

12. Due principally to freight costs, the manufacture and sale of electric resistance welded mechanical steel tubing has tended to be a regional industry. In 1969, the six west coast companies engaged in the manufacture of such products, all of which were based in California, had \$22.1 million sales representing over 68 percent of the market for electric resistance welded mechanical steel tubing in the eleven Western States market; MSL Tube, the largest manufacturer, accounted for approximately 27 percent of total sales. In 1969, the six companies had \$18.1 million sales representing over 72 percent of the sales of electric resistance welded mechanical steel tubing in the State of California; MSL Tube, the largest manufacturer, accounted for approximately 30 percent of California sales.

13. In 1969, the six companies producing electric resistance welded mechanical steel tubing in the California market had not been integrated or affiliated with steel manufacturers.

VI. The Effects of the Acquisition

14. The effect of the acquisition of MSL Tube and MSL Realty may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of electric resistance welded mechanical steel tubing in the State of California and in the eleven Western States in the following ways, among others:

(a). The ability of MSL Tube's nonintegrated competitors effective-

ly to compete in the manufacture and sale of electric resistance welded mechanical steel tubing has been and/or may be substantially impaired.

(b). The entry of new electric resistance welded mechanical steel tubing competitors may have been and/or may be inhibited or prevented.

(c). The dominant position of MSL Tube in the electric resistance welded mechanical steel tubing industry has been, or may be, further strengthened and entrenched vis-a-vis its competitors with the result that the likelihood of any reduction in such dominant position is remote.

VII. Violation Charged

15. The acquisition of MSL Tube and MSL Realty by Kaiser on Mar. 31, 1970, constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. §18).

DECISION AND ORDER

The Federal Trade Commission having initiated a complaint charging that the respondent named in the caption hereof has violated the provisions of Section 7 of the Clayton Act, as amended, 15 U.S.C. §18; and

Respondent and complaint counsel, by joint motion dated Sept. 10, 1974 having moved to have the matter removed from adjudication for the purpose of submitting an executed consent agreement; and

The Commission, by order issued Sept. 24, 1974, having withdrawn this matter from adjudication pursuant to Section 3.25(c) of its rules; and

The executed agreement contains a consent order, an admission by respondent of all the jurisdictional facts set forth in the complaint which the Commission issued, 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 provisions as required by the Commission's 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 3.25(d) of its rules, now in further conformity with the procedure prescribed in Section 3.25(d) of its rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Kaiser Steel Corporation is a corporation organized,

existing and doing business under and by virtue of the laws of the State of Nevada, with its principal place of business located at 300 Lakeside Dr., in the City of Oakland, State of California.

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

ORDER

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

"ERWMSST," or Electric Resistance Welded Mechanical and Structural Steel Tubing, means tubing formed from flat-rolled steel into solid-wall tubing in an electric resistance welded tube mill and used for mechanical or structural applications. It can be made from hot-rolled, cold-rolled or galvanized sheet steel and may be in a round, square, rectangular or a special shape form. ERWMSST does not include pipe or tubing which is used for the conduction of fluids and/or gases ("pipe" or "pressure tubing").

"Respondent" means Kaiser Steel Corporation and any of its domestic subsidiaries and their respective successors and assigns.

"The Business of MSL Tube" means the tubing business acquired by respondent from MSL Industries, Inc. and all additions subsequently made thereto, including the physical plant located in Vernon, Calif. and presently owned by respondent and operated by the Kaiser Steel Tubing Division of respondent; the nine tube mills presently at such physical plant; and all related inventories, accounts receivable and current liabilities of the Kaiser Steel Tubing Division.

"California ERWMSST Producer(s)" means (1) the manufacturers of ERWMSST listed in Appendix A and (2) any other individual or corporation not affiliated with any of the manufacturers listed in Appendix A which, subsequent to the date of this order, commences to manufacture and sell ERWMSST within the State of California.

"Secondary Sheet Steel" means sheet steel which does not meet the producer's quality standards for prime sheet steel and which is for this reason sold at prices lower than the producer's prices for prime sheet steel.

"Affiliated Person" means a person who is at the time of any action taken pursuant to Paragraph III of this order an officer, director, employee or agent of respondent or who owns or controls, directly or indirectly, more than one percent of the outstanding shares of the capital stock of respondent.

I

It is ordered, That:

A. Respondent shall, within six months after the date this Order becomes final, transfer, assign and convey The Business of MSL Tube to a wholly-owned subsidiary, hereinafter called Kaiser Steel Tubing, Inc. ("KST"). KST shall maintain, in accordance with good accounting practice, separate and complete corporate records and accounts, which shall be audited annually by an independent public accountant. KST shall preserve such records for a period of at least five years.

B. Respondent shall not sell any type of sheet steel, including Secondary Sheet Steel, to KST at a price (including extra charges and discounts) lower than respondent's then current list price unless, to respondent's reasonable belief, other California ERWMSST producers can substantially satisfy their requirements for such type of sheet steel by purchases at such lower price.

C. With regard to all other commercial transactions between respondent and KST, Respondent shall establish procedures to insure that such transactions are no more favorable to KST than would be the case if they were entered into between respondent and independent parties on reasonable commercial terms. Respondent shall not enter into any such commercial transaction with KST except on terms which accord with these procedures. Respondent shall report annually to the Commission all such commercial transactions with KST in the preceding year involving more than \$25,000. In addition, such transactions shall be reviewed by the independent accountants described in Paragraph I(A) above, and respondent shall submit to the Commission the reports containing the opinion of said accountants as to whether such transactions complied with the procedures established pursuant to this paragraph.

II

It is further ordered, That

A. Respondent shall in each calendar year make available for sale to each California ERWMSST producer, at a price not exceeding respondent's then current published list price (including applicable extra charges and discounts), subject to credit terms appropriate under the circumstances, and on conditions of sale not less favorable than those offered to KST, a quantity of sheet steel for use in the manufacture of ERWMSST equal to the average of such producer's annual purchases of sheet steel from respondent for use in the manufacture of ERWMSST for the three years during the period 1969 through 1973, inclusive, in which such company purchased the greatest quantities of sheet steel from respondent (its "base years"). In making such allocations, respondent shall use its best efforts to make available to each such ERWMSST producer, hot-rolled, cold-rolled and galvan-

ized sheet steel in the same ratio as those types of steel were purchased by such producer from respondent during its base years. Respondent shall make available for sale to any California ERWMSST producer (1) whose average annual purchases of sheet steel from respondent for use in the manufacture of ERWMSST during its "base years" were less than 1,000 tons, or (2) who commenced the manufacture and sale of ERWMSST in the State of California subsequent to the date of this order, a minimum annual allocation of 1,000 tons of hot-rolled sheet steel for use in the manufacture of ERWMSST.

B. In any calendar year respondent shall increase the quantities of sheet steel made available to California ERWMSST producers pursuant to Paragraph II(A) by the same percentage by which its sales of sheet steel to KST for use in the manufacture of ERWMSST in the most recent calendar year exceeded its 1974 sales of sheet steel to KST for that purpose.

C. Respondent shall in each year, to the extent Secondary Sheet Steel is available, include in the quantity of sheet steel made available for sale to each California ERWMSST producer pursuant to this paragraph, at such producer's option, secondary sheet steel for use in the manufacture of ERWMSST in the same proportion that respondent's sales of secondary sheet steel to KST for use in the manufacture of ERWMSST in the then current calendar year bear to its total sales of sheet steel to KST for that purpose during such calendar year.

D. Respondent shall not be obligated to deliver sheet steel offered for sale to California ERWMSST producers pursuant to the provisions of this paragraph during any period when its ability to produce or deliver sheet steel is substantially impaired by reason of labor difficulties, war, civil commotion, act of God, governmental action, failure of equipment, sources of supply or transportation, or other occurrence beyond respondent's control; and the quantity of sheet steel which respondent shall be obligated to make available for sale to California ERWMSST producers in any year in which such an occurrence takes place shall be reduced in proportion to the total reduction in respondent's production of sheet steel, caused by such occurrence, below its projected production for that year.

III

It is further ordered, That within one year from the date this order becomes final, respondent shall, or shall cause KST to, with respect to each of three tube mills and associated equipment (including jib crane; pay-off reel; coil end joining table; looping system; forming mill; welder; tube cooling section; sizing mill; cut-off device; drive system and console table) suitable for the manufacture of ERWMSST in

commonly used sizes from approximately 1/2 inch to approximately 1 1/2 inch diameter, presently included among the business of MSL Tube, either (1) sell such mill or mills and associated equipment to persons who are not affiliated persons; or (2) impound such mill or mills and associated equipment, provided that any mill or mills and associated equipment so impounded shall not again be used by respondent or KST for the production of ERWMSST within the State of California without prior consent of the Commission.

IV

It is further ordered, That if respondent or KST elects to sell any tube mill pursuant to alternative one of Paragraph III of this order, 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 or KST full payment of the price, with interest, at which such tube mill is sold; *Provided, however*, That should respondent or KST, by exercise of such security interest regain direct or indirect control of any such tube mill, it shall be redinvested or impounded in accordance with Paragraph III of this order, within one year from the date of reacquisition.

V

It is further ordered, That KST shall not sell or offer to sell ERWMSST and steel mill products together at a single price. Nothing in this paragraph shall prevent KST from offering carload or truckload discounts which are computed on the sale of quantities of both tubing and such other products, based on cost savings attributable to the sale of those products together.

VI

It is further ordered That respondent shall, within 60 days from the date this order becomes final, submit to the Commission a detailed written report of its actions, plans, and progress in complying with the provisions of this order and in fulfilling its objectives. Every 60 days thereafter, until respondent has taken one of the alternative actions required by Paragraph III of this order, respondent shall submit a subsequent report on its progress in complying with Paragraph III. Respondent shall submit annually, within 90 days after the end of its fiscal year, a detailed written report of its actions in complying with the remaining provisions of this order.

VII

It is further ordered, That, pending sale or impoundment of the tube mills which are the subject of Paragraph III of this order, respondent shall not make any changes in, other than in the ordinary course of business, or permit any deterioration of, any of such tube mills which may impair such mill's capacity for the manufacture of ERWMSST.

VIII

It is further ordered, That, for a period of ten years from the date this order becomes final, respondent shall not, without the prior approval of the Federal Trade Commission, acquire, or acquire and hold, directly or indirectly, the whole or any part of the assets, stock, share capital, or other actual or potential equity interest or right of participation in the earnings of any domestic concern, corporate or noncorporate, engaged in the manufacture of ERWMSST in the States of Arizona, California, Idaho, Nevada, Oregon, Utah and Washington.

IX

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other proposed change in the corporation which may affect compliance obligations arising out of this order.

X

It is further ordered, That the provisions of this order shall remain in effect for a period of ten years from the date this order becomes final.

APPENDIX A

California ERWMSST Producers:

Bernard Epps & Co., 3165 E. Slauson Avenue, Los Angeles, California 90058.

California Steel and Tube, Inc., 16049 Stephens Street, City of Industry, California 91744.

Cal-Metal Corporation, 1351 West Sepulveda Blvd., Torrance, California.

Harris Tube Division of Automation Industries, Inc., 8720 South San Pedro Street, Los Angeles, California 90003.

Pacific Tube Company 5710 Smithway Street, Los Angeles, California 90040.

Torrance Tube Division of Cyprus Mines Corporation, 1739 213th Street, Torrance, California.

Western Tube & Conduit Corporation, 2730 East 37th Street, Los Angeles, California 90058.

Complaint

86 F.T.C.

IN THE MATTER OF

STATE CREDIT ASSOCIATION, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2722. Complaint, Aug. 27, 1975—Decision, Aug. 27, 1975*

Consent order requiring a Seattle, Wash., debt collection agency, among other things to cease misrepresenting the attachment, garnishment or foreclosure of any assets, wages, or property without making various disclosures to the alleged debtor, and instituting suits in counties other than where the defendant resides or the debt was incurred. Further, respondent is required to comply with the F.T.C.'s "Guides Against Debt Collection Deception."

Appearances

For the Commission: *Gregory L. Colvin.*

For the respondents: *David Gossard, Seattle, Wash.*

COMPLAINT

The Federal Trade Commission, having reason to believe that State Credit Association, Inc., a corporation, and D. Keith Lasswell, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. Respondent State Credit Association, Inc. (hereinafter SCA) is a Washington corporation with its office and principal place of business located at 1314 Howell St., Seattle, Wash.

Respondent D. Keith Lasswell is an officer of SCA. He formulates, directs and controls the policies, acts and practices of said corporation, including those hereinafter set forth, and his business address is the same as that of SCA.

PAR. 2. Respondents are now and have been engaged in the business of collecting or attempting to collect alleged money obligations as agents or assignees of various creditors. Allegations stated below in the present tense include the past tense.

PAR. 3. In the course of its business, SCA engages in substantial interstate commercial intercourse, including transmittal of letters, checks and documents through the United States mails among the various States of the United States. In the course of its business, SCA solicits and receives accounts and other kinds of money obligations for collection from persons and firms, including interstate corporations,