

IN THE MATTER OF
HARNISCHFEGGER CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND CLAYTON ACTS

Docket 9107. Complaint, March 10, 1978 — Decision, Dec. 8, 1978

This consent order, among other things, requires a Brookfield, Wis. manufacturer of lattice-boom cranes and the Northwest Engineering Company, a Green Bay, Wis. competitor, to provide the F.T.C. with evidence that all merger agreements between them have been terminated; and return all confidential documents exchanged during negotiations. The order prohibits respondents from acquiring any part of each other's lattice-boom business until July 31, 1981 without furnishing the Commission with 60 days' notice of such intention. Should the Commission issue a complaint challenging the transaction during this period, respondents are required to postpone the proposed merger or acquisition until administrative proceedings have been concluded. Additionally, the order limits sales between the two companies until July 31, 1981.

Appearances

For the Commission: *Peter E. Greene.*

For the respondents: *Alan I. Becker, Kirkland & Ellis, Chicago, Ill.*
for Harnischfeger Corporation and *William O. Fiffield, Sidley & Austin, Chicago, Ill.* for Northwest Engineering Company.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents, each subject to the jurisdiction of the Commission, have entered into a merger agreement which, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, that said agreement constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act, 15 U.S.C. 21, and Section 5(b), of the Federal Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows:

I. DEFINITION

PARAGRAPH 1. For the purpose of this complaint, the following definition shall apply: "lattice boom cranes" means cranes mounted either on crawlers or rubber tired vehicles, powered by one or more

engines, the boom and hoist functions of which are carried out by wire rope, and which are generally operated by a conventional gear train controlled by brakes and clutches.

II. HARNISCHFEGER CORPORATION

PAR. 2. Harnischfeger Corporation (P&H) is a corporation organized under the laws of the State of Delaware, with its principal place of business at 13400 Bishops Lane, Brookfield, Wisconsin.

PAR. 3. P&H manufactures and sells lattice boom cranes throughout the United States. Annual sales thereof in 1977 exceeded \$25.8 million.

PAR. 4. In its fiscal year ended October 31, 1977, P&H had total net sales of approximately \$466,098,000 and net income of approximately \$21,850,000.

III. NORTHWEST ENGINEERING COMPANY

PAR. 5. Northwest Engineering Company (NW) is a corporation organized under the laws of the State of Delaware, with its principal place of business at 201 West Walnut St., Green Bay, Wisconsin.

PAR. 6. NW manufactures and sells lattice boom cranes throughout the United States. Annual sales thereof in 1977 exceeded \$21.6 million.

PAR. 7. In the twelve-month period ended October 31, 1977, NW had total net sales of approximately \$43,314,000 and net income of approximately \$1,091,000.

IV. JURISDICTION

PAR. 8. At all times relevant herein P&H and NW have been engaged in the manufacture and sale of lattice boom cranes in interstate commerce and are engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and each is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

V. THE MERGER AGREEMENT

PAR. 9. On or about December 22, 1977, P&H and NW entered into a merger agreement which provides, *inter alia*, for the merger of a subsidiary of P&H into NW. Upon consummation of the merger NW will become a wholly-owned subsidiary of P&H.

VI. TRADE AND COMMERCE

PAR. 10. The relevant line of commerce is the manufacture and sale of lattice boom cranes and submarkets thereof.

PAR. 11. A relevant section of the country or geographic market is the entire United States.

PAR. 12. The manufacture and sale of lattice boom cranes is highly concentrated, with the combined market share of the four largest manufacturers estimated to be approximately 70 percent.

PAR. 13. Barriers to entry into the manufacture and sale of lattice boom cranes are substantial.

VII. ACTUAL COMPETITION

PAR. 14. P&H and NW are and have been for many years actual competitors of each other in the manufacture and sale of lattice boom cranes and submarkets thereof and actual competitors of others engaged in the manufacture and sale of lattice boom cranes and submarkets thereof throughout the United States.

PAR. 15. In 1977, P&H accounted for approximately 12.5 percent of United States production of lattice boom cranes and Northwest accounted for approximately 6.4 percent thereof. P&H accounted for approximately 8.4 percent of 1977 United States sales of lattice boom cranes, and Northwest accounted for approximately 7.0 percent thereof.

VIII. EFFECTS; VIOLATIONS CHARGED

PAR. 16. The effects of the proposed acquisition may be to substantially lessen competition or tend to create a monopoly in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

(a) actual competition between P&H and NW in the manufacture and sale of lattice boom cranes and submarkets thereof will be eliminated;

(b) actual competition between competitors generally in the manufacture and sale of lattice boom cranes and submarkets thereof may be lessened;

(c) NW will be eliminated as an actual substantial independent competitor in the manufacture and sale of lattice boom cranes and submarkets thereof;

(d) concentration in the manufacture and sale of lattice boom

cranes will be increased and the possibilities for eventual deconcentration may be diminished; and

(e) mergers or acquisitions between other lattice boom crane manufacturers may be fostered, thus causing a further substantial lessening of competition and tendency toward monopoly in the manufacture and sale of lattice boom cranes.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and Section 7 of the Clayton Act, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Harnischfeger Corporation is a corporation, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at 13400 Bishops Lane, Brookfield, Wisconsin.

2. Respondent Northwest Engineering Company is a corporation, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at 201 West Walnut St., Green Bay, Wisconsin.

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

ORDER

DEFINITION

For purposes of this order the following definition shall apply:

"Lattice-boom cranes" means cranes mounted either on crawlers or rubber-tired vehicles powered by one or more engines, the boom hoist of which are carried out by wire rope, and which are generally operated by a conventional gear train controlled by brakes and clutches.

I.

It is ordered, That Harnischfeger Corporation (Harnischfeger) and Northwest Engineering Company (Northwest) do forthwith provide evidence that all agreements which provided for the merger of a newly formed subsidiary of Harnischfeger into Northwest and which would result in Northwest becoming a wholly-owned subsidiary of Harnischfeger have been terminated. Harnischfeger and Northwest each shall forthwith return any confidential documents provided by the other in connection with the merger agreement, and nothing herein contained shall relieve any party from any obligations of confidentiality imposed by agreement between them or by operation of law.

II.

It is further ordered, That until July 31, 1981 neither Harnischfeger nor Northwest shall acquire either directly or indirectly any part of the lattice boom crane business of each other, whether represented by securities or assets, until sixty (60) days following receipt by the Director of the Bureau of Competition of the Federal Trade Commission of written notice of the proposed acquisition or merger, which notice shall specifically refer to this order. If within sixty (60) days of receipt by the Director of said notice the Commission issues an administrative complaint challenging the proposed acquisition or merger, such proposed acquisition or merger shall not be consummated, nor shall any steps be taken to effectuate such proposed acquisition or merger until the administrative complaint issued by the Commission is dismissed by the Commission, until a final order as defined in 15 U.S.C. 21 and 45 is entered, or until a consent order is entered and served upon the respondents in that administrative proceeding. If within the aforesaid sixty (60) days the Bureau of Competition receives any written position papers from either

Harnischfeger or Northwest and the Bureau recommends issuance of a complaint, the Bureau shall promptly forward to the Commission such papers together with the written notice submitted to the Bureau Director. In the event that within sixty (60) days of the Director's receipt of said notice the Commission issues an administrative complaint challenging the proposed acquisition or merger, the Bureau of Competition shall exert its best efforts to complete the administrative proceeding in an expedited manner.

The execution of a contract between Harnischfeger and an independent distributor or dealer who also is, or formerly was, a distributor or dealer for Northwest shall not be deemed the acquisition of any part of the lattice boom crane business of Northwest under this paragraph, and the execution of a contract between Northwest and an independent distributor or dealer who also is, or formerly was, a distributor or dealer for Harnischfeger shall not be deemed the acquisition of any part of the lattice boom crane business of Harnischfeger under this paragraph, except that Harnischfeger and Northwest shall not jointly execute a contract between them and an independent distributor or dealer.

III.

It is further ordered, That until July 31, 1981 the total sales for each quarterly period or portion thereof based on a calendar year, between Harnischfeger and Northwest shall not account, either directly or indirectly, for an amount equivalent to 4 percent or more of Northwest's total sales for the previous fiscal year. Sales as used herein means the dollar value of total product and parts shipments and shall be accounted for as of the date of shipment.

IV.

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

V.

It is further ordered, That Harnischfeger and Northwest each shall within sixty (60) days after service upon it of this order file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order. Thereafter, on or

before August 15, 1979 and annually thereafter until August 15, 1981, each shall file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order for the immediately preceeding consecutive twelve month period ending on July 31st. The fact that any activity is not prohibited by this order shall not bar a challenge to it by the United States Government, any agency thereof or any person.

Complaint

92 F.T.C.

IN THE MATTER OF

NELSON BROTHERS FURNITURE CORP.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2941. Complaint, Dec. 8, 1978 — Decision, Dec. 8, 1978*

This consent order, among other things, requires a Chicago, Ill. retailer of household goods to cease misrepresenting or failing to make relevant timely disclosures regarding the cost, savings, condition and availability of advertised merchandise; employing bait and switch tactics, or any other unfair or deceptive sales technique in the advertising and sale of its products. Additionally, the order provides customers with the right to arbitration for unresolved disputes and requires the firm to maintain prescribed business records for a period of three years.

Appearances

For the Commission: *Nathan P. Owen.*

For the respondent: *Sidley & Austin, Chicago, Ill.*

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 Nelson Brothers Furniture Corp., hereinafter referred to as respondent, has 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 Nelson Brothers Furniture Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 2750 West Grand Ave., Chicago, Illinois.

PAR. 2. Respondent is engaged in the operation of retail stores in the States of Illinois and Wisconsin. Its volume of business is substantial. In the operation of its retail stores respondent maintains showrooms in which it offers and sells to its customers an extensive line of home furnishings, bedding, carpeting, televisions, appliances and other merchandise. Much of the said merchandise is purchased from numerous suppliers located throughout the United States.

PAR. 3. In the course and conduct of its business, respondent causes, directly or indirectly, the aforesaid merchandise to be