

IN THE MATTER OF
COOPER INDUSTRIES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT

Docket C-2970. Complaint, June 18, 1979 — Decision, June 18, 1979

This consent order, among other things, requires a Houston, Texas manufacturer of hand tools, compressors and other products used by the oil and gas industries to timely divest, subject to FTC approval, its Rotor Tool Division and the gas compressor business acquired through its merger with the Gardner-Denver Company. Additionally, the firm is barred for ten years from acquisitions in the two product areas without prior Commission approval.

Appearances

For the Commission: *Tom D. Smith, Harry L. Hobgood, Marilyn L. Richmond, Robert C. Jones and Dennis F. Johnson.*

For the respondent: *Richard P. Keeton, Vinson & Elkins, Houston, Texas.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Cooper Industries, Inc. ("Cooper"), a corporation subject to the jurisdiction of the Commission, has 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, stating its charges as follows:

I. Definitions

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

(a) "Compressors" means machines which elevate gaseous materials (including air, natural gas, and process gases such as oxygen and nitrogen) to higher pressures.

(b) "Reciprocating gas compressors" means machines which are used to elevate natural gas to higher pressures by confining successive volumes of the gas within a closed space, and in which the

compressing element is a piston which has a reciprocating motion within a cylinder.

(c) "Integral reciprocating gas compressors" means reciprocating gas compressors in which the compressor and the driving engine are enclosed in a common casting, and in which both the driving pistons and the compressing pistons are connected to a common crankshaft.

(d) "Separable reciprocating gas compressors" means reciprocating gas compressors manufactured independently of the engines used to drive them.

(e) "Hand-held Industrial Pneumatic tools" means all tools that are powered by air motors, and which are utilized, or designed to be utilized, in or for manufacturing operations and are operated, or designed to be operated, while being held or supported by an individual's hands, and includes air motors capable of powering such tools and parts for all such tools or motors.

II. The Acquisition

2. On January 22, 1979, Cooper and Gardner-Denver Company ("G-D") entered into agreements whereby Cooper plans to acquire G-D in a transaction valued at approximately \$630.3 million. Under the terms of the agreements, Cooper commenced a cash tender offer on February 14, 1979 for 8.6 million shares of G-D common stock, constituting approximately 45 percent of G-D's outstanding common shares. Approximately 12.6 million shares were tendered before the expiration of the offer. Following completion of the tender offer, Cooper intends to acquire the remaining 55 percent of G-D's common stock through an exchange of G-D common shares for fractional shares of Cooper common stock and a new issue of Cooper convertible preferred stock, with the merger scheduled for completion on or about April 30, 1979.

III. Cooper Industries, Inc.

3. Cooper is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal place of business located at Two Houston Center, Houston, Texas.

4. Cooper is a major manufacturer of compressors and other supplies for the oil and gas industries, a major manufacturer of hand tools, and also provides overhaul and repair services for aircraft jet engines.

5. In 1978, Cooper had total revenues of \$782.0 million, net income of \$68.2 million, assets of \$360.4 million, and was ranked by

Fortune magazine as the nation's 307th largest industrial company based on 1977 sales of \$678.8 million.

6. Cooper's Cooper-Bessemer division manufactures large gas compressors in sizes ranging from 900 horsepower to 30,000 horsepower. Cooper's Ajax division manufactures integral reciprocating gas compressors in sizes ranging from 30 horsepower to 600 horsepower. Cooper's Superior division manufactures separable reciprocating gas compressors in sizes ranging from 300 horsepower to 2,750 horsepower. In 1978, Cooper's Ajax and Superior divisions had total sales of reciprocating gas compressors of approximately \$40.0 million.

7. Cooper's Rotor Tool Division manufactures and sells a broad line of hand-held industrial pneumatic tools. In 1978, Cooper's sales of hand-held industrial pneumatic tools were approximately \$12.0 million.

IV. Gardner-Denver Company

8. G-D is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its principal place of business located at 8585 Stemmons Freeway, Dallas, Texas.

9. G-D manufactures a wide range of drilling equipment used by the construction, petroleum and mining industries, and is also a major producer of compressors, hand-held industrial pneumatic tools and other industrial products.

10. G-D had 1978 revenues of \$652.0 million, net income of \$51.4 million, assets of \$387.1 million, and was ranked by Fortune magazine as the nation's 389th largest industrial company based on 1977 sales of \$502.4 million.

11. G-D is a major manufacturer of compressors. G-D manufactures and sells reciprocating gas compressors in sizes ranging from 20 horsepower to 650 horsepower. In 1978, G-D had total sales of reciprocating gas compressors of approximately \$1.9 million.

12. Through its Pneutronics Division, G-D manufactures and sells a broad line of hand-held industrial pneumatic tools. In 1978, total sales by G-D of hand-held industrial pneumatic tools were approximately \$19.5 million.

V. Jurisdiction

13. At all times relevant to this complaint, Cooper and G-D have been engaged in the manufacture and sale of various products, including those products relevant to this complaint, in interstate

commerce and have been engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12. At all times relevant to this complaint, the businesses of both Cooper and G-D have been in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

VI. Trade and Commerce

14. The relevant markets are:

a. The manufacture in the United States of reciprocating gas compressors in sizes ranging from 30 horsepower to 1,000 horsepower, and the sale of such compressors, as well as any submarket thereof.

b. The manufacture in the United States of hand-held industrial pneumatic tools, and the sale of such tools, as well as any submarket thereof.

VII. Actual Competition

15. Cooper and G-D are now, and have been since at least 1973, actual competitors of each other in both of the relevant markets enumerated in Paragraph Fourteen of this complaint.

A. Reciprocating Gas Compressors

16. In 1978, Cooper was the largest domestic manufacturer of reciprocating gas compressors in sizes ranging from 30 horsepower to 1,000 horsepower, in terms of units shipped, with a market share of approximately 30%. In 1978, G-D was the seventh largest manufacturer of reciprocating gas compressors in sizes ranging from 30 horsepower to 1,000 horsepower, in terms of units shipped, with a market share of approximately 3%.

17. In 1978, the market share of the top four domestic manufacturers was over 60%, in terms of units shipped, for reciprocating gas compressors from 30 horsepower to 1,000 horsepower.

18. G-D and Cooper compete in the manufacture and sale of reciprocating gas compressors ranging in size from 30 horsepower to 1,000 horsepower.

B. Hand-held Industrial Pneumatic Tools

19. In 1977, G-D was the third largest manufacturer of hand-held industrial pneumatic tools with a market share of 10.0%, in terms of dollar sales. In 1977, Cooper was the fifth largest manufacturer of hand-held industrial pneumatic tools with a market share of 5.5%, in terms of dollar sales.

20. In 1978, the market share of the top four domestic manufac-

turers was over 60%, in terms of dollar sales, for hand-held industrial pneumatic tools.

21. G-D and Cooper compete in the manufacture and sale of hand-held industrial pneumatic tools.

IX. Effects of the Acquisition

22. The effects of the proposed acquisition may be to substantially lessen competition or tend to create a monopoly in the relevant markets enumerated in Paragraph Fourteen of this complaint in the following ways, among others:

(a) actual competition between Cooper and G-D in the manufacture and sale of reciprocating gas compressors will be eliminated;

(b) concentration in the manufacture and sale of reciprocating gas compressors will be increased and the possibilities for eventual deconcentration may be diminished;

(c) actual competition between Cooper and G-D in the manufacture and sale of hand-held industrial pneumatic tools will be eliminated; and

(d) concentration in the manufacture and sale of hand-held industrial pneumatic tools will be increased and the possibilities for eventual deconcentration may be diminished.

X. Violations Charged

23. The proposed acquisition set forth in Paragraph Two, if consummated, would violate Section 7 of the Clayton Act, as amended, (15 U.S.C. 18).

24. The proposed acquisition set forth in Paragraph Two, if consummated, would violate Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45).

25. The merger agreements described in Paragraph Two violate Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45).

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of the proposed acquisition of Gardner-Denver Company by Cooper Industries, Inc. (hereinafter referred to as "Cooper"), and Cooper 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 Cooper with violation of Section 7 of the

Clayton Act (15 U.S.C. 18) and Section 5 of the Federal Trade Commission Act (15 U.S.C. 45); and

Cooper, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by Cooper 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 Cooper 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 had reason to believe that Cooper 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Cooper 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 at Two Houston Center, Houston, Texas.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Cooper, and the proceeding is in the public interest.

ORDER

I

It is ordered, That the following definitions shall apply herein:

(1) "Reciprocating gas compressors" means all machines which are used to elevate natural gas to higher pressures by confining successive volumes of the gas within a closed space, and in which the compressing element is a piston which has a reciprocating motion within a cylinder.

(2) "Hand-held industrial pneumatic tools" means all tools that are powered by air motors, and which are utilized, or designed to be utilized, in or for manufacturing operations and are operated, or designed to be operated, while being held or supported by an individual's hands, and includes air motors capable of powering such tools and parts for all such tools or motors.

(3) "Gas compressor business" means the Gardner-Denver Compa-

ny's ML Horizontal Series, RL and RLT Horizontal Series, LA and LB Vertical Series, AOL Vertical "V" Type Air Cooled Series product line of reciprocating gas compressors, related parts, developmental units (including the 13F and MLQ) and the jigs, patterns, dies, designs, drawings, technical data and literature, appropriate royalty-free license for all patents and patent applications, bills of materials and specialized goods that are unique to, or necessary for, the manufacture of such reciprocating gas compressors and which are currently in existence or which are produced prior to divestiture.

(4) "Rotor Tool Division" means the Rotor Tool Division of Cooper, and includes all assets, properties, titles to property, interests, rights and privileges of whatever nature, tangible and intangible, including, but not limited to, all real property, buildings, machinery, equipment, tools, raw materials, inventory, customer lists, trade names, patents, patent applications, trademarks and all other property of whatever description presently owned or operated by Cooper for the manufacture of the products produced by the Rotor Tool Division, together with all additions, replacements, and improvements hereafter made by Cooper to the Rotor Tool Division.

II

It is further ordered, That Cooper, its officers, directors, agents, representatives and employees shall:

(1) Within twelve (12) months from the date this order becomes final, divest absolutely, to an acquiror which meets with the prior approval of the Federal Trade Commission, the gas compressor business acquired by Cooper as a result of its merger with Gardner-Denver Company; and

(2) Within eighteen (18) months from the date this order becomes final, divest absolutely, with the prior approval of the Federal Trade Commission, the Rotor Tool Division as a going concern in the manufacture and sale of hand-held industrial pneumatic tools.

III

It is further ordered, That in connection with the divestiture of the gas compressor business required by Paragraph II of this order, Cooper shall offer to any prospective acquiror the right to enter into a contract to buy from Cooper, if Gardner-Denver Company manufactured them during any part of the calendar year 1978, replacement parts for, and parts normally used in or for the gas compressor business (excluding parts for developmental equipment), which

contract will, at the acquiror's option, include one or both of the following provisions:

(1) The contract will continue for a minimum of two (2) years or for a shorter period of time at the sole discretion of the acquiror;

(2) Prices for such replacement parts and parts will be not more than inventory cost (before any adjustment for LIFO valuation) as of the date of divestiture plus 29% of such inventory cost during the first twelve (12) month period and plus 50% of such inventory cost during the second twelve (12) month period. Further, the acquiror shall have the right to have Cooper's books and accounts inspected by an independent accounting firm, which firm shall be subject to approval by Cooper, and which approval shall not be unreasonably withheld, for the purpose of confirming such inventory cost.

IV

It is further ordered, That in connection with the divestiture of the gas compressor business required by Paragraph II of this order, Cooper shall:

(1) Make available, at their place of employment, all former Gardner-Denver personnel in the employ of Cooper who are familiar and associated with the gas compressor business for advice and assistance and such detailed explanation of the gas compressor business as the acquiror may request for a period of one (1) year following the date of divestiture;

(2) License royalty-free, for a period of two (2) years following the date of divestiture, the name "Gardner-Denver" to the acquiror for use in connection with the gas compressor business;

(3) Not use, in connection with the manufacture or sale of reciprocating gas compressors, for a period of two (2) years following the date of divestiture, the name "Gardner-Denver;"

(4) Refrain, for a period of five (5) years from the date of divestiture, from manufacturing or selling the reciprocating gas compressors comprising the gas compressor business or replacement parts for use in the gas compressor business, except in accordance with Paragraph III of this order, *provided, however,* that Cooper shall have the right to sell replacement parts to owners of such reciprocating gas compressors if, after Cooper has notified the acquiror in writing, the acquiror fails to provide parts for such reciprocating gas compressors within ninety (90) days.

V

It is further ordered, in connection with the divestiture of the

Rotor Tool Division required by Paragraph II of this order, that Cooper shall:

(1) Beginning 20 days after the date this order becomes final, until divestiture, maintain and operate the Rotor Tool Division as a separate division with separate books and accounts, separate management, separate assets, and separate personnel, and not transmit, or permit the transmittal of, the Rotor Tool Division's technical data, marketing plans or pricing information to Cooper, except that Cooper may continue to receive the Rotor Tool Division's profit forecasts and continue to monitor the Rotor Tool Division's performance against such forecasts, and may continue to provide the following corporate services: banking, industrial relations, legal, insurance, safety, tax, and pension management;

(2) Not sell, lease, otherwise dispose of, or encumber, without the consent of the Federal Trade Commission, any substantial property or other assets of the Rotor Tool Division;

(3) Prior to divestiture, not hire or employ, except as an employee of the Rotor Tool Division, any individual employed by the Rotor Tool Division during any part of the period from March 15, 1979, to the date of divestiture without the prior approval of the Federal Trade Commission, except for the following named individuals: Frank X. Linsenmeyer, Jr., and E. Ralph Smith III; *provided* that such named individuals shall not be associated with the Rotor Tool Division in any way for more than one (1) year from the date this order becomes final, unless such individuals are hired or employed by the acquiror; and *further provided* that Cooper shall not interfere in any way with the acquiror's soliciting employment agreements from, or negotiating employment agreements with, such named individuals;

(4) For a period of three (3) years following divestiture, not hire or employ, without the prior approval of the Federal Trade Commission, any individual employed by the Rotor Tool Division during any part of the period from March 15, 1979 to the date of divestiture;

(5) Pending divestiture, maintain the Rotor Tool Division as an independent entity and take no action to impair such entity's economic or financial position; and

(6) Pending divestiture, not allow the deterioration of the Rotor Tool Division in a manner that impairs its viability.

VI

It is further ordered. That Cooper shall cease and desist, for a period of ten (10) years from the date this order becomes final, 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 or share capital of any corporate or noncorporate concern engaged in the United States in, or any assets utilized in, the manufacture, distribution, importation or sale of (a) reciprocating gas compressors in sizes ranging from 30 to 1,000 horsepower, or powered by engines in sizes ranging from 30 to 1,000 horsepower, or (b) hand-held industrial pneumatic tools.

VII

It is further ordered, That Cooper shall, within sixty (60) days from the date this order becomes final, and every sixty (60) days thereafter until Cooper has accomplished the divestitures required by Paragraph II of this order, submit in writing to the Federal Trade Commission a verified report setting forth in detail the manner and form in which Cooper intends to comply or has complied with Paragraphs II, III, IV and V of this order. All such reports shall include a summary of contacts or negotiations with anyone for the specified assets, the identity of all such persons, and copies of all written communications to and from such persons.

VIII

It is further ordered, That annually on the anniversary of the date this order becomes final, for a period of ten (10) years, Cooper shall submit in writing to the Federal Trade Commission a verified report setting forth in detail the manner and form in which Cooper intends to comply or has complied with Paragraph VI of this order.

IX

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

IN THE MATTER OF
ARNAUDVILLE INDUSTRIES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND MAGNUSON-MOSS
WARRANTY ACTS

Docket C-2972. Complaint, June 21, 1979 — Decision, June 21, 1979

This consent order, among other things, requires an Arnaudville, La. manufacturer and seller of mobile homes to cease improperly designating its warranties; and failing to include in its warranties all the information required by the Disclosure Rule, 16 CFR 701 (1977). The order further requires that purchasers of firm's products manufactured after July 4, 1975, whose warranties are still in effect, be informed, as prescribed, of their legal rights and the firm's obligations under warranties.

Appearances

For the Commission: *Michael E.K. Mpras, Bernard Fensterwald III*
and *Rachel Miller*.

For the respondent: *Robert G. Szabo*, Arnaudville, La.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and of the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act ("Warranty Act") and the implementing rules promulgated under the Warranty Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Arnaudville Industries, Inc., a corporation, sometimes referred to in the complaint as respondent, has violated the provisions of said Acts and implementing rules, 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 Arnaudville Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana with its principal office and place of business located at Highway 31, P.O. Box 79, Arnaudville, Louisiana.

PAR. 2. Respondent has been, and is now, engaged in the manufacture, distribution and sale of mobile homes to the public.

PAR. 3. In the course and conduct of its business, respondent is a supplier of consumer products distributed in commerce, as "suppli-