

Complaint

96 F.T.C.

IN THE MATTER OF
THE BENDIX CORPORATION

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

Docket C-3042. Complaint, Sept. 23, 1980—Decision, Sept. 23, 1980

This consent order requires, among other things, a Southfield, Mich. industrial firm engaged in four major business segments: automotive, aerospace-electronics, forestry and industrial-energy, to divest itself of the Warner & Swasey Rotating Toolholder Business and the Bendix Crush-Form Grinder Business within one year of the effective date of the order to a Commission-approved firm. Further, the order requires Bendix to maintain the businesses as viable business entities, and prohibits any diminishing of their value prior to their divestiture. The order also places a ten-year ban on the purchase of any concerns engaged in the rotating toolholder market or in the external cylindrical grinding machine market without prior Commission approval.

Appearances

For the Commission: *Robert Doyle and Richard Rosen.*

For the respondent: *Abe Krash, Arnold & Porter, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the respondent, The Bendix Corporation ("Bendix"), a corporation subject to the jurisdiction of the Commission, has made a tender offer and has entered into a merger agreement either of 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) "Machine tool" means a stationary, power-driven machine,

falling within codes 3541 and 3542 of the 1972 Standard Industrial Classification Manual, used to cut or form metal.

(b) "Rotating toolholder" means a device in which a cutting tool is secured to a machine tool for purposes of cutting excess material in the form of chips from a metal workpiece by rotation of the cutting tool against the workpiece.

(c) "External cylindrical grinding machine" means a machine tool used for shaping a cylindrical metal workpiece by bringing the exterior of the workpiece into contact with a rotating abrasive wheel, called a grinding wheel, in order to remove excess metal.

(d) "Computer numerical control unit" means an electronic unit that directs the operation of a machine tool through a series of coded instructions from a programmed computer system, and does not include programmable controllers.

(e) "Numerically controlled machine tool" means a machine tool that is operated by instruction provided by a computer numerical control unit.

II.

THE BENDIX CORPORATION

2. Bendix is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal executive offices at Bendix Center, Southfield, Michigan.

3. Bendix is a publicly traded company (NYSE) which in 1979 had sales of \$3.8 billion and net assets of \$2.3 billion. Bendix and its subsidiaries are engaged in four major business segments: automotive, aerospace-electronics, forest products, and industrial-energy.

4. At all times relevant herein, Bendix has been and is now engaged in commerce within the meaning of the Clayton Act, as amended, and is a corporation whose business is in or affecting commerce within the meaning of the Federal Trade Commission Act, as amended.

III.

THE WARNER & SWASEY COMPANY

5. The Warner & Swasey Company ("Warner & Swasey") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio with its principal executive offices at 11000 Cedar Ave., Cleveland, Ohio.

6. Warner & Swasey is a publicly traded company (NYSE) which

in 1978 had sales of \$245 million and net assets of \$223 million. Warner & Swasey is one of the largest producers of machine tools in the United States.

7. At all times relevant herein, Warner & Swasey has been and is now engaged in commerce within the meaning of the Clayton Act, as amended, and is a corporation whose business is in or affecting commerce within the meaning of the Federal Trade Commission Act, as amended.

IV.

ACQUISITION

8. On December 11, 1979, Bendix and Warner & Swasey entered into an agreement providing for the merger of the two companies. Pursuant to the agreement, on December 13, 1979, Bendix offered to purchase up to 45 percent of Warner & Swasey's common stock. Following the tender offer, according to the agreement, Warner & Swasey will be merged into a subsidiary of Bendix with Warner & Swasey common stock being exchanged for Bendix preferred stock. The entire transaction is valued at approximately \$300 million.

V.

TRADE AND COMMERCE

9. The relevant geographic market is the United States as a whole.

10. The relevant product markets are:

(a) The manufacture and sale of computer numerical control units and submarkets thereof;

(b) The manufacture and sale of numerically controlled machine tools and submarkets thereof;

(c) The manufacture and sale of external cylindrical grinding machines and submarkets thereof;

(d) The manufacture and sale of rotating toolholders and submarkets thereof.

11. Concentration in the manufacture and sale of the relevant products is high.

12. Barriers to entry into the manufacture and sale of the relevant products are high.

13. Bendix is and for many years has been a significant supplier of computer numerical control units to actual and potential competi-

tors of Warner & Swasey and other producers of numerically controlled machine tools.

14. Warner & Swasey is a significant purchaser of computer numerical control units.

15. The market for computer numerical control units in the United States in 1978 was approximately \$105 million.

16. Bendix and Warner & Swasey are and for many years have been substantial and actual competitors in the sale of external cylindrical grinding machines.

17. In 1978, the United States market for external cylindrical grinding machines was approximately \$110 million.

18. Bendix and Warner & Swasey are and for many years have been substantial and actual competitors in the sale of rotating toolholders.

19. In 1979, the United States market for rotating toolholders was approximately \$35 million.

VI.

EFFECTS OF THE ACQUISITION

20. The effects of the proposed acquisition may be substantially to lessen competition or tend to create a monopoly in the relevant markets enumerated in Paragraphs 9 and 10 of this complaint in the following ways, among others:

(a) actual and potential producers of computer numerical control units other than Bendix may be foreclosed from selling to a significant purchaser of computer numerical control units;

(b) actual and potential machine tool producers other than Warner & Swasey may be foreclosed from a significant source of supply of computer numerical control units;

(c) barriers to entry into each of the relevant markets will be raised;

(d) substantial actual and potential competition between Bendix and Warner & Swasey and other firms in the manufacture and sale of external cylindrical grinding machines will be eliminated;

(e) concentration in the manufacture and sale of external cylindrical grinding machines will be increased to the detriment of actual and potential competition, and the possibilities for eventual deconcentration may be diminished;

(f) substantial actual and potential competition between Bendix and Warner & Swasey and other firms in the manufacture and sale of rotating toolholders will be eliminated;

(g) concentration in the manufacture and sale of rotating toolholders will be increased to the detriment of actual and potential competition, and the possibilities for eventual deconcentration may be diminished.

VII.

VIOLATIONS CHARGED

21. The proposed acquisition set forth in Paragraph 8, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and would violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

22. The merger agreement described in Paragraph 8 violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

Commissioners Pitofsky and Bailey did not participate.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition of The Warner & Swasey Company (hereinafter "Warner & Swasey") by The Bendix Corporation (hereinafter "Bendix"), and Bendix 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 Bendix with violations of the Federal Trade Commission Act and the Clayton Act; and

Bendix, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by Bendix 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 Bendix 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 Bendix 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. Bendix is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal executive offices at Bendix Center, in the City of Southfield, State of Michigan.

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

ORDER

I

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

(1) "Machine Tool" means a stationary, power-driven machine, falling within codes 3541 and 3542 of the 1972 Standard Industrial Classification Manual, used to cut or form metal.

(2) "Rotating Toolholder" means a device in which a cutting tool is secured to a machine tool for purposes of cutting excess material in the form of chips from a metal workpiece by rotation of the cutting tool against the workpiece.

(3) "Warner & Swasey Rotating Toolholder Business" means that part of the Balas Division of Warner & Swasey presently owned or operated by Warner & Swasey for the manufacture of rotating toolholders 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 that are unique to, or necessary for, the manufacture of rotating toolholders and which are currently in existence, together with all additions, replacements, and improvements hereafter made by Warner & Swasey or Bendix prior to divestiture.

(4) "External Cylindrical Grinding Machine" means a machine tool used for shaping a cylindrical metal workpiece by bringing the exterior of the workpiece into contact with a rotating abrasive wheel, called a grinding wheel, in order to remove excess metal.

(5) "Bendix Crush Form Grinder Business" means that part of the Automation and Measurement Division of Bendix presently owned or operated by Bendix for the manufacture of crush form grinding machines 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 (excluding the trade name and trademark "Bendix"), and all other property of whatever description that are unique to, or necessary for, the manufacture of crush form grinding machines and which are currently in existence together with all additions, replacements, and improvements hereafter made by Bendix prior to divestiture.

(6) "Computer Numerical Control Unit" means an electronic unit that directs the operation of a machine tool through a series of coded instructions from a programmed computer system, and does not include programmable controllers.

(7) "Numerically Controlled Machine Tool" means a machine tool that is operated by instruction provided by a computer numerical control unit.

(8) "Bendix" means The Bendix Corporation and any successor to the business of The Bendix Corporation.

(9) "Warner and Swasey" means The Warner & Swasey Company and any successor to the business of The Warner & Swasey Company.

II

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

(1) Within twelve (12) months from the date this order becomes final, divest absolutely, or cause Warner & Swasey to divest absolutely, to an acquirer which meets with the prior approval of the Federal Trade Commission, the Warner & Swasey Rotating Toolholder Business, as a viable going business of the acquirer; and

(2) Within twelve (12) months from the date this order becomes final, divest absolutely, to an acquirer which meets with the prior approval of the Federal Trade Commission, the Bendix Crush Form Grinder Business, as a viable going business of the acquirer.

III

It is further ordered, That, pending the divestiture of the Warner & Swasey Rotating Toolholder Business and the Bendix Crush Form Grinder Business required by Paragraph II of this order, Bendix shall not take any action (other than sales of products in the ordinary course of business), without the consent of the Federal Trade Commission, to diminish the value of the Warner & Swasey

Rotating Toolholder Business or the Bendix Crush Form Grinder Business.

IV

It is further ordered, That, without the prior approval of the Federal Trade Commission:

(1) For the two (2) years following the date this order becomes final, Bendix shall not equip with its computer numerical control units more than ten (10) percent of the numerically controlled machine tools manufactured by Warner & Swasey; and

(2) In the third and fourth years following the date this order becomes final, Bendix shall not equip with its computer numerical control units more than twenty-five (25) percent of the numerically controlled machine tools manufactured by Warner & Swasey.

V

It is further ordered, That:

(1) Bendix shall treat in confidence and not transfer or reveal to Warner & Swasey information which any other customer for computer numerical control units transmits to Bendix, and designates as proprietary, for such period as the customer shall specify; *provided*, that Bendix shall not have any such obligation if the proprietary information (a) has already been transmitted to Bendix and Warner & Swasey by a party other than the customer, (b) is developed by Bendix or Warner & Swasey independently, (c) is already available to the general public, or (d) becomes available to the general public through no act or fault of Bendix;

(2) Warner & Swasey shall treat in confidence and not transfer or reveal to Bendix information which any other supplier of computer numerical control units transmits to Warner & Swasey, and designates as proprietary, for such period as the supplier shall specify; *provided*, that Warner & Swasey, shall not have any obligation if the proprietary information (a) has already been transmitted to Bendix or Warner & Swasey by a party other than the supplier, (b) is developed by Bendix or Warner & Swasey independently, (c) is already available to the general public, or (d) becomes available to the general public through no act or fault of Warner & Swasey; and

(3) Bendix shall enter into an agreement in writing with each of its customers for computer numerical control units, and Warner & Swasey shall enter into an agreement in writing with each of its suppliers of computer numerical control units, embodying the

undertakings of confidentiality set forth in subparagraphs (1) and (2) of this Paragraph.

VI

It is further ordered, That, for a period of ten (10) years following the date this order becomes final:

(1) Bendix shall maintain its business in computer numerical control units as an organization and profit center separate from the machine tool business of Warner & Swasey; and

(2) In order to assure the availability of Bendix as a significant supplier of computer numerical control units to actual and potential competitors of Warner & Swasey and other manufacturers of numerically controlled machine tools, Bendix shall not offer or sell computer numerical control units to Warner & Swasey on preferential terms regarding price, delivery, service, or any other terms or conditions of sale; nor shall Bendix offer or sell new computer numerical control units to Warner & Swasey, nor offer to develop new computer numerical control units for Warner & Swasey, on a basis inconsistent with Bendix' business practices with respect to other customers for computer numerical control units.

VII

It is further ordered, That Bendix shall announce generally to the trade the provisions of Paragraphs V and VI, and shall deliver a copy of this order to each of its customers for computer numerical control units and to each of Warner & Swasey's suppliers of computer numerical control units.

VIII

It is further ordered, That Bendix 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, share capital, or assets (other than products acquired for use or resale in the ordinary course of Bendix' business) of any corporate or noncorporate concern organized in the United States and engaged in, or the assets of which are utilized in, the manufacture or sale in the United States of

- (a) rotating toolholders;
- (b) external cylindrical grinding machines; or

(c) numerically controlled machine tools;

provided, that nothing in this Paragraph shall prohibit Bendix from acquiring the stock, share capital, or assets of any corporate or noncorporate concern engaged in the manufacture of numerically controlled machine tools, whose assets devoted to the manufacture of numerically controlled machine tools at the end of the year preceding such acquisition, or whose sales thereof during the year preceding such acquisition, were not in excess of ten million dollars (\$10,000,000).

IX

It is further ordered, That Bendix shall, within ninety (90) days from the date this order becomes final, and every ninety (90) days thereafter until Bendix has accomplished the divestitures required by Paragraph II of this order, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which Bendix intends to comply or has complied with Paragraphs II and III of this order. All such reports shall include a summary of contacts or negotiations with respect to the sale of the Warner & Swasey Rotating Toolholder Business or the Bendix Crush Form Grinder Business, the identities of all parties to such contacts or negotiations, and copies of all written communications to and from such parties.

X

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

XI

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

Commissioners Pitofsky and Bailey did not participate.

Complaint

-96-F.T.C.

IN THE MATTER OF
FORD MOTOR COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 9105. Complaint, Jan. 10, 1978—Decision, Oct. 2, 1980

This consent order requires, among other things, a Dearborn, Mich. motor vehicle manufacturer to cease failing to supply consumers, on request, with "Technical Service Bulletins" which clearly describe engine or transmission problems that could cost over \$125; preventative maintenance steps to take; and the extent of any reimbursements or free repairs. The company is required to establish a toll-free number and mail to all requesting consumers bulletins that affect their cars. Each car owner must be notified by mail whenever warranty protection covering engine, transmission or other significant problems is extended. Respondent is further required to announce the existence of its automobile information program in various national publications, and copy test all ads before publication to ensure that the required information is communicated as effectively as their regular product advertising. Additionally, the order requires that consumers be advised of the availability of the repair information and possible post-warranty reimbursement for repairs through warranty and owner manuals, dealer showroom posters, and individual mailings to all 1979 and 1980 Ford car owners. Under the terms of the order, the company is required to follow procedures to ensure reimbursement of each owner who incurred expenses for repairs prior to notification of adjustment programs; make replacement parts available to dealers; and pay all costs for parts and labor incurred by dealers in repairing specified conditions.

Appearances

For the Commission: *Richard H. Gateley, Barbara Arnold Maier, Paul D. Gandola, Robert P. Weaver, Noble F. Jones and David V. Plottner.*

For the respondent: *Lloyd T. Williams, Jr. and David R. Larrouy, Dearborn, Mich.; Robert L. Wald, Wald, Harkrader & Ross, Washington, D.C.*

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 Ford Motor Company, a corporation, hereinafter sometimes 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