

Complaint

96 F.T.C.

IN THE MATTER OF

MURATA MANUFACTURING CO., LTD.

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-3053. Complaint, Dec. 16, 1980—Decision, Dec. 16, 1980

This consent order requires, among other things, "Murata," a Japanese manufacturer and seller of electronic components, including various types of ceramic capacitors, to divest itself of the Arizona Division of Erie Technological Products, Ltd. (ETP), to a Commission-approved buyer within nine months from the effective date of the order. Should Murata fail to divest ETP's Arizona Division in the specified time, it must divest the entire company to an eligible party within the four months following the initial divestiture period. Respondent is further required to hold ETP's business and assets completely separate and apart from its business and assets pending divestiture, and barred from acquiring, without prior Commission approval, certain firms engaged in the manufacture or sale of ceramic capacitors.

Appearances

For the Commission: *Steven R. Newborn, Sandra G. Wilkof and Virginia L. Snider.*

For the respondent: *W. Clayton Sparrow, Jr., Hurt, Richardson, Garner, Todd & Cadenhead, Atlanta, Ga., and Calvin Collier, Hughes, Hubbard & Reed, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the respondent, Murata Manufacturing Co., Ltd. ("Murata"), subject to the jurisdiction of the Commission, has entered into an agreement providing for the acquisition of a majority of the stock of Erie Technological Products, Ltd. ("ETP"), 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.

DEFINITIONS

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

(a) A "*capacitor*" is an electrical energy storage device constructed of electrodes (conducting layers) separated by dielectric (insulating) material and included within code 3675 of the 1972 Standard Industrial Classification Manual. Capacitors are used in almost all electrical and electronic equipment.

(b) A "*ceramic capacitor*" is a capacitor incorporating ceramic material as the dielectric material, included within codes 3675080 through 3675086 and 3675089 of the 1972 Standard Industrial Classification Manual.

(c) A "*single layer ceramic capacitor*" is a ceramic capacitor constructed of two electrodes separated by one layer of ceramic dielectric material. Single layer ceramic capacitors may be shaped as discs, plates or tubes, included within code 3675080 of the 1972 Standard Industrial Classification Manual.

(d) A "*monolithic (or multilayer) ceramic capacitor*" is a ceramic capacitor consisting of many layers of electrodes and ceramic dielectrics which are sintered at high temperatures to form a monolithic block, included within codes 3675081-3675086 of the 1972 Standard Industrial Classification Manual.

(e) A "*fixed capacitor*" is a capacitor of which the capacitance (energy storing capability) is fixed at a given level at manufacture.

(f) A "*variable capacitor*" is a capacitor designed and manufactured to provide various ranges of capacitance, rather than a single capacitance rating, and the capacitance of which can be adjusted manually after insertion into circuitry, included within code 3675089 of the 1972 Standard Industrial Classification Manual. A ceramic variable capacitor is a variable capacitor incorporating ceramic material as the dielectric material.

II.

MURATA MANUFACTURING CO., LTD.

2. Murata is a corporation organized and existing under the laws of Japan.

3. Murata manufactures and sells electronic and electrical components including, but not limited to, capacitors, piezoelectric products, resistors, tuners, active filters, and CR networks. Murata

has subsidiaries and manufacturing operations in the United States, Germany and the Far East, and its products are distributed in more than thirty countries worldwide. Murata had 1979 sales of over \$200 million.

4. Murata does business in the United States through and with its wholly-owned subsidiary, Murata Corporation of America ("MCA"). MCA, with headquarters at Marietta, Georgia, sells products manufactured by Murata and manufactures and sells fixed ceramic and variable capacitors.

5. In 1979, Murata ranked among the top eight sellers of fixed ceramic capacitors in the United States (with a 4.4% market share) and second in sales of single layer ceramic capacitors (with a 10.4% market share). Murata was the sixth largest seller of ceramic variable capacitors (with a 5.7% market share) in the United States.

6. At all times relevant herein, Murata 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.

ERIE TECHNOLOGICAL PRODUCTS, LTD.

7. ETP is a corporation organized and existing under the laws of Canada.

8. James J. Walsh, an American citizen and the company's president, owns and controls the largest block of ETP's stock. The remaining stock is owned by 23 other shareholders.

9. ETP manufactures and sells passive electronic components and assemblies including capacitors, noise interference filters, rectifiers and other products used in electronic and electrical applications. ETP has manufacturing and testing facilities in Erie, State College, and Carlisle, Pennsylvania; Tucson, Arizona; Nogales, Mexico; Canada; and Germany. In 1979, ETP's worldwide sales were over \$40 million.

10. ETP ranks among the eight largest sellers in the United States of all fixed ceramic capacitors (with a 4.4% market share), and among the four largest sellers of single layer ceramic capacitors (with a 9.4% market share). It is the second largest seller of ceramic variable capacitors (with a 23.3% market share) in the United States.

11. At all times relevant herein, ETP 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.

THE ACQUISITION

12. On November 30, 1979, Murata and ETP entered into a purchase agreement providing for the acquisition by Murata of 75% of ETP's stock for a purchase price of up to \$5,200,000. Under the terms of the agreement, Murata has the option to acquire the remaining 25% of each shareholder's stock at an escalating rate.

V.

TRADE AND COMMERCE

13. The relevant geographic market is the entire United States.

14. The relevant product markets are:

- (a) the manufacture and sale of all fixed ceramic capacitors;
- (b) the manufacture and sale of single layer ceramic capacitors;
- (c) the manufacture and sale of ceramic variable capacitors.

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

VI.

EFFECTS OF THE ACQUISITION

16. The effects of the proposed acquisition may be to substantially lessen competition or tend to create a monopoly in the relevant markets enumerated in Paragraphs 13 and 14 of this Complaint in the following ways, among others:

- (a) it will eliminate substantial actual competition between Murata and ETP in the relevant markets;
- (b) it will significantly increase the already high levels of concentration in the relevant markets;
- (c) it will further raise the barriers to entry that exist in the relevant markets;
- (d) the competitive benefits of internal expansion and innovation may be eliminated; and
- (e) customers of ceramic capacitors, single layer ceramic capaci-

tors, and ceramic variable capacitors and ultimate consumers of products incorporating such products may be denied the benefits of free and open competition.

VII.

VIOLATIONS CHARGED

17. The proposed acquisition set forth in Paragraph 12, 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.

18. The purchase agreement described in Paragraph 12 violates 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 Erie Technological Products, Ltd. ("ETP") by Murata Manufacturing Co., Ltd. ("Murata"), and Murata 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 Murata with violations of the Federal Trade Commission Act and the Clayton Act; and

Murata, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by Murata 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 Murata that the law has been violated as alleged in such complaint, and waivers 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 Murata 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 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. Murata is a corporation organized, existing and doing business under and by virtue of the laws of Japan with its principal executive offices at 26-10, 2-Chome, Tenjin, Nagaokakyo-shi, Kyoto 617, Japan.

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

ORDER

I.

It is ordered, That for the purposes of this order the following definitions shall apply:

1. "*Murata*" means Murata Manufacturing Co., Ltd., a corporation organized, existing, and doing business under and by virtue of the laws of Japan with its principal offices at 26-10, 2-Chome, Tenjin, Nagaokakyo-shi, Kyoto 617, Japan, as well as its officers, employees, agents, its parents, divisions, subsidiaries, affiliates, successors, assigns, and the officers, employees or agents of Murata's parents, divisions, subsidiaries, affiliates, successors or assigns.

2. "*ETP*" means Erie Technological Products, Ltd., a corporation organized, existing, and doing business under and by virtue of the laws of Canada with its principal offices at Suite 408, 1 Eva Rd., Etobicoke, Ontario, Canada, as well as its officers, employees, agents, its parents, divisions, subsidiaries, affiliates, successors, assigns, and the officers, employees or agents of ETP's parents, divisions, subsidiaries, affiliates, successors or assigns. "*ETP*" also means the entire company, including 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, inventory, customer lists, tradenames, patents, patent applications, trademarks and all other property of whatever description presently owned or operated by ETP with all additions, replacements and improvements hereafter made to ETP.

3. "*Divested Products*" means all ceramic disc capacitors, ceramic plate capacitors, ceramic variable capacitors, ceramic tubular capacitors, and ceramic high voltage capacitors manufactured by ETP on or within three years prior to the effective date of this order.

4. "*Arizona Division*" means 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, raw materials, inventory, customer lists, tradenames, patents, patent applications, trademarks, orders

for purchase of Divested Products from ETP that are unfilled on the date of the divestiture, and all other property of whatever description presently owned or operated by ETP for the manufacture of the Divested Products located in the case of tangible property in State College, Pennsylvania, Tucson, Arizona, and Nogales, Mexico, with all additions, replacements, and improvements hereafter made to the Arizona Division and such additional property of ETP that Murata determines to include in the Arizona Division. The term "Arizona Division" excludes all: (1) real estate and buildings located in State College, Pennsylvania; (2) other property located in State College, Pennsylvania, that the Commission, Murata, and the Eligible Person (as defined below) may agree is not necessary for the manufacture of the Divested Products; (3) debts and liabilities (except trade accounts payable and not overdue, accrued salaries, payroll taxes, payroll taxes withheld, accrued interest, insurance, utilities, and other similar operating expenses, to the extent these liabilities do not exceed accounts receivable); and (4) future leasehold obligations relating to ETP's facilities in Tucson, Arizona, and Nogales, Mexico.

5. "*Eligible Person*" means any individual, corporation (including subsidiaries thereof), partnership, joint venture, trust, unincorporated association, other business or legal entity, or any combination thereof, approved by the Commission. Such approval shall be in the sole discretion of the Commission.

6. "*Initial Divestiture Period*" shall mean a period ending nine months from the date of issuance of this order, except that if prior to the expiration of such nine month period, Murata has proposed a person as an Eligible Person and the Commission has neither approved nor disapproved of such person, then such nine month period shall be extended until thirty days following the Commission's approval or disapproval of such person as an Eligible Person. In no event shall the initial divestiture period be extended more than once.

II.

It is further ordered. That within four months after the end of the Initial Divestiture Period, Murata shall divest absolutely ETP to an Eligible Person, unless within the Initial Divestiture Period Murata shall have divested absolutely the Arizona Division to an Eligible Person.

III.

It is further ordered, That divestiture under paragraph II shall be in a manner which preserves the assets and business divested as a going concern and as a viable competitor. .

IV.

It is further ordered, That pending divestiture under paragraph II required by this order:

A. Murata shall operate ETP as a separately managed subsidiary, separately maintaining its own financial books and records, auditors, employees and management. All earnings and profits of ETP shall be retained by ETP and shall not be distributed to Murata or any third party as dividends or in any other form.

B. Murata: (1) shall exert no control over or influence on or interfere in any way in any of the business decisions or operations of ETP; (2) shall not cause ETP, directly or indirectly, to adopt policies preferred, suggested, or dictated by Murata; (3) shall not change ETP's existing policies or methods of operation. Furthermore, no Murata officer, director, employee, representative, or agent shall serve in any ETP position and no Murata officer, director, employee, representative or agent shall serve on ETP's Board of Directors.

C. Murata shall refrain from consolidating, directly or indirectly, its manufacturing, planning, purchasing, marketing, sales, research and development, personnel, or any other operations with those of ETP, *provided*, that Murata may continue to use ETP's office space and computer facilities in Germany, to the limited extent it is already using those facilities as of the date this agreement is accepted by the Commission for placement on the public record.

D. Murata shall refrain from taking any action, directly or indirectly, which would cause any changes or alterations to be made in ETP's business or operations or organization, including, but not limited to, changes in the executive, management, personnel, research and development, manufacturing, marketing, and distribution aspects of ETP.

E. Murata shall refrain from interfering with ETP's presently used trademarks and tradenames and ETP shall continue to be free to use such trademarks and tradenames to identify products, and Murata shall not use such trademarks and tradenames to identify any products other than those manufactured by ETP.

F. Murata shall refrain from taking any actions with respect to

ETP likely to diminish ETP's sales or interfere with its corporate opportunities.

G. Murata shall refrain from marketing and/or selling its products through the same representatives or employees through which ETP markets and/or sells its products, except to the extent to which Murata's products and ETP's products were marketed and/or sold through the same representatives prior to November 30, 1979.

H. Murata shall refrain from promoting the products of ETP as its own products.

I. Murata shall refrain from buying or using any advertising that promotes the products of Murata and ETP together or discloses the relationship between the two companies.

J. Murata shall refrain from engaging in joint selling of Murata products and products of ETP.

K. Murata shall refrain from, directly or indirectly, selling, disposing of, or causing to be transferred any assets, property, or business of ETP, except that ETP may sell or transfer manufactured products in the ordinary course of business.

L. Murata shall refrain from mortgaging or pledging the assets of ETP pursuant to any loan transaction in which the borrower is Murata, or any entity other than ETP, except in connection with divestiture pursuant to paragraph II.

M. Murata shall refrain from causing ETP to guarantee any debts or obligations pursuant to any loan transaction in which the borrower is Murata, or any entity other than ETP, except in connection with divestiture of the Arizona Division pursuant to paragraph II.

N. Murata shall refrain from making available or communicating to ETP any confidential or proprietary information, and Murata shall not seek to obtain or exploit, directly or indirectly, any of ETP's trade secrets, manufacturing processes, patents, know-how, formulas or other technical information, unpublished price lists, customer lists, non-public financial and accounting books and records, or any other competitively sensitive information.

O. Murata shall hold in strict confidence and shall not divulge to any third party or use for its own or any third party's benefit any confidential information which Murata has obtained or may obtain from ETP since November 30, 1979, except for the limited purpose of effecting divestiture pursuant to paragraph II.

P. Murata shall provide the Federal Trade Commission with written notice immediately upon termination, resignation, retirement, or transfer of any officer or director or senior executive of ETP.

Q. During the life of this agreement and for the purpose of assuring compliance herewith, duly authorized representatives of the Federal Trade Commission shall be permitted, upon written request and reasonable notice to Murata, to interview officers, directors, and employees of Murata and ETP and examine documents, at reasonable times and in the presence of Murata counsel (if Murata employees) and ETP counsel (if ETP employees), regarding matters covered by this agreement.

V.

It is further ordered, That the divestiture ordered and directed by this order shall be made in good faith and shall be absolute and unqualified; *provided, however,* that an Eligible Person may give, and Murata may accept and enforce, any bona fide lien, mortgage, deed of trust or other form of security on all or any portion of the assets or business divested. If a security interest is accepted, in no event may such security interest give Murata a right to participate in the operation or management of such assets or business. In the event that Murata, as a result of the enforcement of any bona fide lien, mortgage, deed of trust or other form of security interest, reacquires possession of the assets divested, then Murata shall redinvest the reacquired assets, as a going concern and as a viable competitor, to an Eligible Person within six months of the reacquisition.

VI.

It is further ordered, That, for a period of ten years from the date of issuance of this order, Murata, its parents, divisions, subsidiaries, affiliates, successors, or assigns, shall not, directly or indirectly, acquire any stock, share capital, or equity interest in any concern, corporate or noncorporate, engaged in the manufacture or sale in or to the United States of ceramic capacitors, without the prior approval of the Federal Trade Commission, if such concern:

A. is incorporated in the United States or organized under the laws of one of the United States or has its principal offices within the United States; or

B. manufactures ceramic capacitors in the United States; or

C. had annual net sales of ceramic capacitors of five million dollars or more in or into the United States in the most recently completed calendar year prior to the date of the requested approval.

VII.

It is further ordered, That Murata shall, within sixty days from the date of issuance of this order and every sixty days thereafter until divestiture is completed, submit in writing to the Commission a report setting forth in detail the manner and form in which Murata intends to comply, is complying, and has complied with the terms of this order and such additional information relating thereto as may from time to time reasonably be required. 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. After divestiture is completed, Murata shall submit in writing annual reports showing the manner and form of compliance with this order.

VIII.

It is further ordered, That for a period of ten years from the date of issuance of this order, Murata shall notify the Commission at least thirty days prior to any change in Murata which may affect compliance with the obligations arising out of this consent order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation.

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