

Complaint

IN THE MATTER OF
KENNECOTT 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-3075. Complaint, Sept. 28, 1981—Decision, Sept. 28, 1981

This consent order requires, among other things, a Stamford, Conn., manufacturer engaged in the production of various products, including fabric air filter bags utilized in the control of industrial air pollution, to timely divest its subsidiary, the Filter Media Division, "FMD," in accordance with the terms of the order. Pending such divestiture, the firm is required to operate its prospective acquisition, National Filter Media, as a separately managed entity. The order further bars the company from certain acquisitions for a period of ten years without prior Commission approval.

Appearances

For the Commission: *Steven R. Newborn, Michael Antalics, Nancy Markowitz, and Virginia L. Snider.*

For the respondent: *Richard E. Carlton and Richard Lyons, Sullivan & Cromwell, New York City.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the respondent, Kennecott Corporation ("Kennecott"), a corporation subject to the jurisdiction of the Commission, has entered into an 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. The term *baghouse* means a system used for the filtration of particulate matter from gas streams for environmental and safety reasons or for the recapture of valuable particulates.
 - b. The term *fabric air filter bag* means a tubular or non-tubular,

seamed or seamless bag, varying in length, width and material, which is used within air pollution control systems called *baghouses*.

II. KENNECOTT CORPORATION

2. Kennecott is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal executive offices at Ten Stamford Forum, High Park Ridge, Stamford, Connecticut.

3. At all times relevant herein, Kennecott has been and is a corporation whose business is in or affecting commerce within the meaning of the Federal Trade Commission and Clayton Acts, as amended.

III. DORR-OLIVER INCORPORATED

4. Curtiss-Wright Corporation ("Curtiss-Wright") 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 One Passaic St., Wood-Ridge, New Jersey.

5. Dorr-Oliver Inc. ("Dorr-Oliver") is a corporation organized and doing business under and by virtue of the laws of the State of Delaware with its principal offices at 77 Havemeyer Lane, Stamford, Connecticut. Dorr-Oliver is a wholly-owned subsidiary of Curtiss-Wright.

6. At all times relevant herein, Curtiss-Wright has been and is a corporation whose business is in or affecting commerce within the meaning of the Federal Trade Commission and Clayton Acts, as amended.

IV. ACQUISITION

7. On January 29, 1981, Kennecott and Curtiss-Wright entered into an agreement for the sale of Curtiss-Wright's Dorr-Oliver subsidiary to Kennecott for approximately \$110,000,000.

V. TRADE AND COMMERCE

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

9. The relevant product market is the manufacture and sale of fabric air filter bags.

10. Concentration in the manufacture and sale of the relevant product is high.

11. There are barriers to entry into the manufacture and sale of the relevant product.

12. Both Kennecott through its Filter Media Division and Dorr-Oliver, through its subsidiary, National Filter Media Corporation, are significant competitors in the relevant market.

VI. EFFECTS OF THE ACQUISITION

13. The effects of the proposed acquisition may be to substantially lessen competition or tend to create a monopoly in the relevant market enumerated in Paragraphs 7 and 8 of this Complaint in the following ways, among others:

- (a) it will eliminate substantial actual competition between Kennecott and Dorr-Oliver in the relevant market;
- (b) it will significantly increase the already high levels of concentration in the relevant market;
- (c) it will further raise the barriers to entry that exist in the relevant market;
- (d) customers of fabric air filter bags may be denied the benefits of free and open competition.

VII. VIOLATIONS CHARGED

14. The proposed acquisition set forth in Paragraph 7, 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.

15. The agreement described in Paragraph 7, 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 Dorr-Oliver Incorporated (hereinafter "Dorr-Oliver"), a wholly-owned subsidiary of Curtiss-Wright Corporation ("Curtiss-Wright"), by Kennecott Corporation (hereinafter "Kennecott"), and Kennecott 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 Kennecott with violations of the Federal Trade Commission Act and the Clayton Act; and

Kennecott, its attorneys, and counsel for the Commission having

thereafter executed an agreement containing a consent order, an admission by Kennecott 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 Kennecott 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 Kennecott 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. Kennecott is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal executive offices at Ten Stamford Forum, High Ridge Park, Stamford, Connecticut.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Kennecott, 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. *Kennecott* means Kennecott Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal offices at Ten Stamford Forum, Stamford, Connecticut, as well as its officers, employees, agents, its parents, divisions, subsidiaries, affiliates, successors, assigns, and the officers, employees or agents of Kennecott's parents, divisions, subsidiaries, affiliates, successors, or assigns.
2. *Curtiss-Wright* means Curtiss-Wright Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal offices at One Passaic St., Wood-Ridge, New Jersey, as well as its officers, employees, agents, its parents, divisions, subsidiaries, affiliates, successors,

assigns, and the officers, employees or agents of Curtiss-Wright's parents, divisions, subsidiaries, affiliates, successors, or assigns.

3. *Dorr-Oliver* means Dorr-Oliver Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware and a wholly-owned subsidiary of Curtiss-Wright, with its principal offices at 77 Havemeyer Lane, Stamford, Connecticut, as well as its officers, employees, agents, its parents, divisions, subsidiaries, affiliates, successors, assigns, and the officers, employees or agents of Dorr-Oliver's parents, divisions, subsidiaries, affiliates, successors, or assigns.

4. *Filter Media Division* or *FMD* 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, trade names, patents, patent applications, trademarks, orders for purchase that are unfilled on the date of the divestiture, and all other property of whatever description presently owned or operated, together with all additions, replacements, and improvements hereafter made, by the Filter Media Division of the Kennecott Engineered Systems Company, a division of Kennecott Corporation.

5. *National Filter Media* or *NFM* means the National Filter Media Corporation, a subsidiary of Dorr-Oliver. It 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, raw materials, inventory, customer lists, trade names, patents, patent applications, trademarks, orders for purchase that are unfilled on the date of the divestiture, and all other property of whatever description presently owned or operated by NFM.

6. *Relevant products* means fabric air filter bags, wet filtration media, and cages.

a. The term *fabric air filter bag* means a tubular or non-tubular, seamed or seamless bag, varying in length, width, and material, which is used within air pollution control systems called *bag houses*.

b. The term *bag house* means a system used for the filtration of particulate matter from gas streams for environmental or safety reasons or for the recapture of valuable particulate.

c. The term *wet filtration media* means fabric filters of any shape used in industrial applications to separate liquids from solids.

d. The term *cages* means cylindrical wire mesh forms used in bag houses as a support for fabric air filter bags.

7. *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.

II.

It is ordered, That Kennecott shall divest absolutely and unqualifiedly FMD to an Eligible Person within nine months from the date of the issuance of this order.

III.

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

IV.

It is further ordered, That, pending the divestiture of FMD required by Paragraph II of this Order, Kennecott shall not take any action other than in the ordinary course of business, without the consent of the Federal Trade Commission, to diminish the value of FMD.

V.

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

A. Kennecott shall operate NFM as a separately managed subsidiary, separately maintaining its own financial books and records, internal auditors, employees and management. Earnings and profits of NFM shall be retained by NFM and shall not be distributed to Kennecott or any third party as dividends or in any other form; *provided, however*, that ordinary dividends may be declared by NFM and that portion of dividends due the Filter Fabrics Company may be paid to the Filter Fabrics Company.

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

agent shall serve in any NFM position and no Kennecott officer, director, employee, representative or agent shall serve on NFM's Board of Directors; *provided, however*, that Messrs. S. P. Felt, Jr., P. S. Felt, R. G. McElhanney, C. B. Scoble, G. Ehinger, and W. P. Holden may continue to serve on NFM's Board of Directors if they provide to the Commission an executed copy of the affidavit attached as Appendix I to this Order.

VI.

It is further ordered, That, for a period of ten years from the date of issuance of this order, Kennecott, its parents, divisions, subsidiaries, affiliates, successors, or assigns, shall not, directly or indirectly, acquire any stock, share capital, or equity interest in or assets used in the manufacture of any relevant product by, any concern, corporate or non-corporate, engaged in the manufacture or sale of any relevant product without the prior approval of the Federal Trade Commission.

VII.

It is further ordered, That Kennecott shall, within ninety days from the date of issuance of this order, and every ninety days thereafter until divestiture is completed, submit in writing to the Commission a report setting forth in detail the manner and form in which Kennecott 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, Kennecott 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, Kennecott shall notify the Commission at least thirty days prior to any change in Kennecott 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.

APPENDIX I

AFFIDAVIT

STATE OF)
) ss:
CITY OF)

_____ being duly sworn, hereby deposes and says:

I, _____ affirm that I have read the Agreement Containing Consent Order to which this Sworn Statement is attached, and that pending divestiture of FMD as ordered in Paragraph II of that Agreement:

(1) I shall not cause NFM, directly or indirectly, to adopt policies or methods of operation preferred, suggested, or dictated by Kennecott and that Kennecott shall exert no control over or influence on or interfere in any way in, my consideration of any of the business decisions or operations of NFM;

(2) I will in no way, either directly or indirectly, participate in the business decisions or operations of FMD;

(3) I will make any reports on the business or operations of NFM to either Dorr-Oliver or Kennecott only in writing and will simultaneously forward a copy of each such report to the Commission.

Sworn to before me this _____ day of _____ 1981.

Notary Public

My Commission expires _____.)

IN THE MATTER OF
COMMERCIAL CREDIT COMPANY

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS

Docket C-2420. Decision, June 26, 1973—Modifying Order, Sept. 29, 1981

This order reopens the proceeding and modifies the Commission's order issued on June 26, 1973 (38 F.R. 20229; 82 F.T.C. 1841) against one of the nation's largest finance companies by substituting for the order in its entirety, a modified order which deletes language requiring the company to obtain a "Personal Insurance Authorization" form from each borrower before the loan could be completed. For the next five years, the modified order requires the company to give borrowers who elect to purchase insurance a notice entitled "Your Right To Cancel Insurance," and give the customer the right to cancel credit insurance within 15 days of signing for a loan and receive a full refund of insurance funds.

ORDER REOPENING THE PROCEEDING AND MODIFYING CEASE AND
DESIST ORDER

Upon consideration of a request by respondent to reopen the proceeding and modify the Cease and Desist Order entered by consent against respondent in this matter on June 26, 1973, with the concurrence of the Divisions of Credit Practices and Compliance, and with the Director of the Bureau of Consumer Protection having recommended that the requested modifications of the Order be granted, the Commission has concluded on the basis of the foregoing that respondent's request should be granted,

It is therefore ordered, That this proceeding be reopened and that the following Modified Final Order be substituted and issued in lieu of the Order entered on June 26, 1973:

MODIFIED FINAL ORDER

I. *It is ordered,* That respondent Commercial Credit Company, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the granting of consumer loans subject to the provisions of Regulation Z, 12 C.F.R. 226.8 (1980), after April 1, 1982 12 C.F.R. 226.17 and 226.18 (1981), and the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, as amended, do forthwith cease and desist from:

1. Failing, when the charges for credit life insurance are