

IN THE MATTER OF
IMO INDUSTRIES, INC.

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

Docket 9235. Complaint, Nov. 8, 1989—Decision, Apr. 25, 1990

This consent order requires, among other things, a Lawrenceville, N.J. based corporation to seek prior FTC approval, for a period of ten years, before acquiring any company that has manufactured and sold 25 millimeter second generation image intensifier tubes in the U.S., or that has sold such tubes to the U.S. Dept of Defense at any time since January 1, 1988. In addition, for ten years, respondent is required to notify the Commission at least thirty days prior to any proposed corporate changes that may affect compliance with the order.

Appearances

For the Commission: *Ann B. Malester* and *Steven A. Newborn*.

For the respondent: *Margaret K. Pfeiffer, Sullivan & Cromwell*,
Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that the respondent, Imo Industries Inc. ("Imo"), a corporation subject to the jurisdiction of the Commission, has entered into an agreement that violates Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45); that through this agreement Imo has agreed to acquire Optic-Electronic Corp. ("OEC") and that such acquisition of OEC, if consummated, would constitute a 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); and it appearing that a proceeding in respect thereof would be in the public interest, the Commission 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. IMO INDUSTRIES INC.

1. Imo is a corporation organized and doing business under the laws

of Delaware, with its principal place of business at 3450 Princeton Pike, Lawrenceville, New Jersey.

2. In fiscal year 1988, Imo had net sales of \$687 million and net assets of \$756 million.

3. In September 1988, Imo acquired Varo Inc. ("Varo") at a cost of approximately \$117 million. Varo's principal offices are located in the Dallas metropolitan area.

4. In fiscal year 1988, Varo had net sales of approximately \$113 million.

5. Varo is engaged in the manufacture and sale of products, including 25 millimeter second generation ("25mm 2d generation") image intensifier tubes, throughout the United States and is engaged in or affects commerce within the meaning of the Clayton Act, as amended, and the Federal Trade Commission Act, as amended.

II. JURISDICTION

6. At all times relevant herein, respondent Imo has been, and is now, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and 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.

III. THE PROPOSED ACQUISITION

7. Pursuant to a Stock Purchase Agreement ("Agreement") dated September 11, 1989, Imo agreed to purchase all of the outstanding and issued shares of OEC's common stock from United Scientific Inc., a Delaware corporation and a wholly owned subsidiary of United Scientific Holdings plc ("USH"), a British company with its principal offices in London. OEC is a wholly owned subsidiary of USH. The total transaction is valued at approximately \$69 million.

IV. NATURE OF TRADE AND COMMERCE

8. The relevant product market is the manufacture and sale of 25mm 2d generation image intensifier tubes. 25mm 2d generation image intensifier tubes are used to enhance visual images in low light conditions by amplifying available illumination to visible levels.

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

V. MARKET STRUCTURE

10. The relevant market is highly concentrated whether measured

by the Herfindahl-Hirschmann Index ("HHI") or by four-firm and eight-firm concentration ratios.

VI. BARRIERS TO ENTRY

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

VII. ACTUAL AND POTENTIAL COMPETITION

12. Imo and OEC are actual and potential competitors in the manufacture and sale of the relevant product.

VIII. EFFECTS

13. The effects of the aforesaid agreement and the aforesaid acquisition, if consummated, may be substantially to lessen competition 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) It will eliminate actual and potential competition between Imo and OEC and between OEC and others in the relevant market;
- (b) It will significantly increase the already high levels of concentration in the relevant market;
- (c) It will create a firm whose share of the relevant market is so high as to lead to dominant firm status;
- (d) It will eliminate OEC as a substantial independent competitive force in the relevant market; and
- (e) It will enhance the possibility of collusion or interdependent coordination by the remaining firms in the relevant market.

IX. VIOLATIONS CHARGED

14. The proposed acquisition of OEC by Imo would, if consummated, violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

15. The Stock Purchase Agreement set forth in Paragraph 7 constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

16. The proposed acquisition of OEC by Imo would, if consummated, violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

Commissioner Owen not participating

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent, Imo Industries, Inc., with violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent that the law has been violated as alleged in such complaint, and waivers and other provisions 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 Imo Industries Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 3450 Princeton Pike, in the City of Lawrenceville, State of New Jersey.

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

ORDER

I.

For the purposes of this order, the following definitions shall apply: "Imo" means Imo Industries Inc., as well as its officers, employees,

representatives, agents, parents, divisions, subsidiaries, successors, and assigns, as well as the officers, employees and agents of its parents, divisions and subsidiaries.

II.

It is ordered, That for a period commencing on the date this order becomes final and continuing for ten (10) years from the date this order becomes final, Imo shall not acquire, without the prior approval of the Commission, directly or indirectly, the whole or any part of the stock, share capital, equity interest, or assets, other than purchases of manufactured product in the ordinary course of business, of any company that has manufactured and sold 25 millimeter second generation image intensifier tubes in the United States, or that has sold 25 millimeter second generation image intensifier tubes to the United States Department of Defense, at any time since January 1, 1988.

III.

It is further ordered, For a period commencing on the date this order becomes final and continuing for ten (10) years from the date this order becomes final, that any successor corporation to Imo shall be bound by this order to the same extent as Imo; further Imo shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation that may affect compliance obligations arising out of the order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of any subsidiary manufacturing or selling 25 millimeter second generation image intensifier tubes in the United States, or any other change that may affect compliance obligations arising out of the order.

IV.

It is further ordered, That Imo shall within sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

DIAMOND SHAMROCK CORPORATION

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-2493. Consent Order, Mar. 18, 1974—Set Aside Order, Apr. 30, 1990

The Federal Trade Commission has set aside a 1974 consent order as it applies to Occidental, a successor to a part of Diamond Shamrock Corporation, (83 FTC 1389), thus removing the order's prohibition of reciprocal dealing with customers and suppliers and certain related conduct. Occidental argued, among other things, that the restrictions in the order constrained its ability to compete, and that reopening and vacating the order would be in the public interest.

ORDER REOPENING AND SETTING ASIDE ORDER

Occidental Chemical Corporation ("Occidental"), a successor to a part of the business of Diamond Shamrock Corporation ("DSC"),¹ has filed a "Request of Occidental Chemical Corporation To Reopen and Vacate a Consent Order" ("Request"), pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice, 16 CFR 2.51. In the Request, Occidental asks the Commission to reopen the proceeding in Docket No. C-2493 and set aside the consent order issued by the Commission on March 18, 1974, "insofar as it applies to Occidental." Request at 1. In support of its Request, Occidental states that the relief it seeks is required by changed conditions and the public interest. Request at 3. Occidental's request was placed on the public record for thirty days, pursuant to Section 2.51 of the Commission's Rules of Practice. No comments were received. For the reasons stated below, the Request is granted.

I.

The Commission issued its complaint and order in this matter on March 18, 1974. The complaint alleged that DSC had engaged in reciprocal dealing by "systematically utiliz[ing] its actual or potential purchases to obtain or increase sales of its products, services or raw

¹ The order applies to DSC and its "subsidiaries, successors, and assigns." 83 FTC at 1392. Occidental is a successor by acquisition. Request at 1.