

IN THE MATTER OF
EMERSON ELECTRIC CO., ET AL.

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 C-3291. Complaint, June 22, 1990—Decision, June 22, 1990

This consent order requires, among other things, a Missouri producer of mounted ball bearings to divest McGill Manufacturing Company's mounted ball bearing business to a Commission approved acquirer, within twelve months after the consent order becomes final, or else consent to the appointment of a trustee by the Commission. Respondents are also required to offer to the prospective acquirer a contract to buy from respondents any necessary machinery, equipment and tooling. In addition, respondents are prohibited from selling, for a period of 18 months, mounted ball bearings under the McGill name.

Appearances

For the Commission: *Howard M. Morse* and *Steven A. Newborn*.

For the respondents: *Arthur F. Golden, Davis, Polk & Wardwell*,
New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondents, Emerson Electric Company, a corporation, and Emerson Power Transmission Co., a corporation, (collectively "Emerson"), both subject to the jurisdiction of the Federal Trade Commission, propose to acquire substantially all of the common stock of McGill Manufacturing Co., Inc. ("McGill") 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 ("FTC Act"), 15 U.S.C. 45; and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent Emerson Electric Co. is a corporation organized and existing under the laws of the State of Missouri with its office and

principal place of business at 8000 West Florissant Avenue, St. Louis, Missouri.

2. Respondent Emerson Power Transmission Corporation is a corporation organized and existing under the laws of the State of Delaware with its office and principal place of business at 620 South Aurora Street, Ithaca, New York.

3. McGill Manufacturing Co., Inc. is a corporation organized and existing under the laws of the State of Indiana with its office and principal place of business at 909 North Lafayette Street, Valparaiso, Indiana.

4. Respondents at all times herein have been and now are engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and are corporations whose business or practices are in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

II. THE ACQUISITION

5. On or about December 11, 1989, Emerson entered into an agreement and plan of merger with McGill, in which Emerson agreed to purchase substantially all of McGill's common stock. Purchase of substantially all of McGill's common stock would give Emerson control of McGill. The total value of the proposed acquisition is approximately \$137 million.

III. THE RELEVANT MARKET

6. For purposes of this complaint, the relevant line of commerce in which to analyze the proposed acquisition of McGill is the production and distribution of mounted ball bearings.

7. For purposes of this complaint, the relevant geographic market is the United States.

8. Production and distribution of mounted ball bearings is highly concentrated, whether measured by Herfindahl-Hirschmann indices or two-firm and four-firm concentration ratios.

9. Entry into both production and distribution of mounted ball bearings is very difficult and time consuming.

10. Emerson is the leading firm and Emerson and McGill are actual competitors in the production and distribution of mounted ball bearings.

IV. EFFECTS

11. The effect of the acquisition may be substantially to lessen

competition in the relevant market described above in paragraphs 6 and 7 in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the FTC Act, 15 U.S.C. 45, by, among other things:

- a. Eliminating substantial actual competition between Emerson and McGill;
- b. Significantly enhancing the likelihood of collusion or interdependent coordination between or among the firms that produce or sell the relevant products; and
- c. Tending to create a dominant firm in the relevant market.

V. VIOLATION CHARGED

12. The acquisition as set forth in paragraph 5 herein violates Section 7 of the Clayton Act, as amended, 15 U.S.C. 18 and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents 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 respondents with violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of a complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents 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 the respondents have 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, and having duly considered the comments filed thereafter by interested persons pursuant to Section

2.34 of its Rules, 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. Respondent Emerson Electric Co. is a corporation organized, existing and doing business under and by virtue of the laws of the state of Missouri, with its principal executive offices located at 8000 W. Florissant Avenue, St. Louis, Missouri.

2. Respondent Emerson Power Transmission Corp. 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 located at 620 S. Aurora Street, Ithaca, New York.

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

ORDER

I.

As used in this order, the following definitions shall apply:

a. "*Emerson*" means Emerson Electric Co., a Missouri corporation, its predecessors, any other corporations, partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates that Emerson controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns. "*EPT*" means Emerson Power Transmission Corp., a Delaware corporation which is a wholly-owned subsidiary of Emerson.

b. "*McGill*" means McGill Manufacturing Company, Inc., an Indiana corporation, as it was constituted prior to the acquisition, its predecessors, any other corporations, partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates McGill controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

c. "*Acquisition*" means Emerson's acquisition of any or all voting securities of McGill.

d. "*Respondents*" means Emerson and EPT.

e. "*Mounted ball bearings*" means and includes ball bearings

incorporated into a housing for attachment to a piece of machinery or equipment, including pillow blocks, flange units, take up blocks, take up frame assemblies, and screw conveyor hanger bearings; and ball bearing inserts, cartridge units, and adapter bearings, normally used in mounted ball bearing assemblies.

f. The "*McGill Mounted Ball Bearing Business*" means the mounted ball bearing manufacturing facility owned and operated by McGill which is located in Malden, Indiana (the "Malden Plant") and all of McGill's assets, title, properties, interests, rights and privileges, of whatever nature, tangible and intangible, including without limitation all buildings, machinery, equipment, tooling, and other property of whatever description at the Malden Plant or used exclusively in the manufacture or sale of mounted ball bearings, and including, insofar as they relate to mounted ball bearings, customer and supplier lists, business records, trademarks (including, but not limited to Krown Regal, Centrik-Lok, Nyla-K, and Nylaplate-K) other than the name McGill, and the exclusive rights, insofar as they relate to mounted ball bearings, to any patents or knowhow used by McGill in conjunction with the manufacture or sale of mounted ball bearings, and including McGill's mounted ball bearing inventory wherever located.

g. "*Acquirer*" shall have the meaning given to the term in Section II.

h. "*Commission*" means the Federal Trade Commission.

II.

It is ordered, That:

A. Respondents shall, within twelve (12) months after the date this order becomes final, divest, absolutely and in good faith, to an acquirer that receives the prior approval of the Commission (the "acquirer"), the McGill Mounted Ball Bearing Business.

B. The divestitures required by this order shall be made only to an acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture required by this order is to ensure the continuation of an ongoing viable enterprise and to remedy the lessening of competition alleged in the Commission's complaint.

C. Respondents shall take such action as is necessary to maintain the viability and marketability of the McGill Mounted Ball Bearing

Business, and to prevent the destruction, removal or impairment of any assets subject to possible divestiture pursuant except in the ordinary course of business and except for ordinary wear and tear.

III.

It is further ordered, That:

A. If respondents have not divested the McGill Mounted Ball Bearing Business as required by Section II within the twelve-month period provided for in Section II, respondents shall consent to the appointment of a trustee by the Commission to divest the McGill Mounted Ball Bearing Business. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, for any violation of this order, respondents shall similarly consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it for any failure by respondents to comply with this order.

B. If a trustee (the "trustee") is appointed by the Commission or a court pursuant to Section III of this order, the following terms and conditions shall apply:

(1) The Commission shall select the trustee, subject to the consent of respondents, which consent shall not be unreasonably withheld. The trustees shall be a person with experience and expertise in acquisitions and divestitures.

(2) The trustee shall have the exclusive power and authority, subject to the prior approval of the Commission, to accomplish the divestiture required by Section II of this order. The trustee shall have twelve (12) months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of such twelve-month period the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended for such reasonable period of time by the Commission, or by the court for a court-appointed trustee; *provided, however*, that the Commission or court may only extend the divestiture period two (2) times.

(3) Respondents shall make available to the trustee and the trustee shall have full and complete access to the personnel, books, records, and facilities relating to the assets (*i.e.*, the McGill Mounted Ball Bearing Business) that the trustee has the duty to divest. Respondents shall develop such financial or other information as the trustee may reasonably request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture by the trustee caused by the respondents shall extend the time for divestiture under this Section III in an amount equal to the delay, as determined by the Commission, or the court for a court-appointed trustee.

(4) The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondents' absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in Section II of this order and subject to the prior approval of the Commission. If the trustee receives bona fide offers from more than one prospective acquirer, and if the Commission approves more than one such acquirer, the trustee shall divest to the acquirer selected by respondents from among those approved by the Commission.

(5) The trustee shall serve, without bond or other security, at the cost and expense of respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ such consultants, accountants, attorneys or other persons reasonably necessary to carry out the trustee's duties and responsibilities and respondents shall bear the expense for such services. The trustee shall account for all monies derived from the divestiture and for all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of respondents and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's accomplishing the divestiture of the McGill Mounted Ball Bearing Business.

(6) Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission, and, in the case of a court-appointed trustee, of the court, the respondents shall, consistent with the provisions of this order, execute a trust agreement that

transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

(7) Except for cases of misfeasance, negligence, willful or wanton acts, or bad faith by the trustee, the trustee shall not be liable to respondents for any action taken or not taken in the performance of the trusteeship. Respondents shall indemnify the trustee and hold the trustee harmless against any liabilities, claims, or expenses arising out of performance of the trusteeship, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, claims, or expenses result from misfeasance, negligence, willful or wanton acts, or bad faith by the trustee.

(8) If the trustee ceases to act or fails to act diligently, one or more substitute trustees shall be appointed in the same manner as provided in this order.

(9) The trustee shall report in writing to respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture.

(10) The trustee shall have no obligation or authority to operate or maintain the McGill Mounted Ball Bearing Business.

IV.

It is further ordered, That:

In connection with any divestiture of McGill's Mounted Ball Bearing Business, respondents will offer, and a trustee appointed pursuant to this order shall have the authority to offer, to any prospective acquirer, a contract to buy from respondents for use in said mounted ball bearing business, machined and heat treated rings and locking collars of the types currently supplied by McGill to the Malden plant, which contract will include reasonable commercial terms and provisions substantially as follows:

- (a) The contract will, at the acquirer's request, continue for a period of as much as eighteen (18) months following the closing of a transaction in satisfaction of the divestiture required by this order;
- (b) Prices will not exceed McGill's standard cost plus 15 percent;
- (c) Quantities offered for sale in each year will equal at least the total quantity of said rings heretofore supplied to said plant during

1989, or four times the quantity so supplied in the fourth quarter of 1989, whichever is greatest;

(d) The acquirer will lease or consign to respondents for the period of the contract, any necessary machinery, equipment and tooling not located at the Malden Plant, which is used in the production of mounted ball bearings, and which is divested to the acquirer pursuant to Section II hereof.

V.

It is further ordered, That:

A. The Agreement to Hold Separate, attached hereto and made a part hereof as Appendix I, shall continue in effect until respondents' divestiture obligations under Sections II and III of the order are satisfied, or until such other time as the Agreement to Hold Separate provides, and the respondents shall comply with all terms of said agreement.

B. Respondents shall not offer for sale mounted ball bearings under the McGill name for a period of 18 months following the closing of a transaction in satisfaction of the divestiture required by this order.

VI.

It is further ordered, That within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until respondents have fully satisfied the divestiture obligation of this order, respondents shall submit to the commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying or have complied with the order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of all contacts or negotiations with prospective acquirers for the divestiture required by this order, including the identity of all parties contacted. Respondents also shall include in their compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports, and recommendations concerning the required divestiture.

VII.

It is further ordered, That for the purposes of determining or securing compliance with this order, and subject to any legally

recognized privilege, upon written request and on reasonable notice to respondents made to their principal offices, respondents shall make available to any duly authorized representatives of the Commission:

A. All books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession of under the control of respondents relating to any matters contained in this order, for inspection and copying during office hours and in the presence of counsel; and

B. Upon five (5) days' notice to respondents, and without restraint or interference from respondents, for interview, officers or employees of respondents, who may have counsel present, regarding such matters.

Any information or documents obtained by the Commission from respondents shall be accorded such confidential treatment as is available under Sections 6(f) and 21 of the Federal Trade Commission Act, 15 U.S.C. 46(f) and 57b-2.

VIII.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in any respondent, such as dissolution, assignment or sale resulting in the emergence of a successor, or the creation or dissolution of subsidiaries or any other change that may affect compliance with this order.

IX.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, each respondent shall cease and desist from acquiring, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, assets used in, or more than 1% of the stock or share capital of, or interest in, any company engaged in, the manufacture or sale of mounted ball bearings in the United States. (This paragraph shall not apply to the acquisition of new machinery or equipment or of used machinery or equipment from suppliers of or brokers for such machinery or equipment, by means of normal transactions customary in the used equipment market.) One year from the date this order becomes final and annually thereafter for nine (9) years, respondents shall file with the Commission a verified written report of their compliance with this paragraph.

IN THE MATTER OF
PHARMACEUTICAL SOCIETY OF ORANGE COUNTY, INC.

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

Docket C-3292. Complaint, July 9, 1990—Decision, July 9, 1990

This consent order prohibits, among other things, the pharmaceutical society from organizing or entering into any agreement among pharmacy firms to withdraw from or refuse to enter into a third-party payer prescription drug plan; for ten years, from continuing any meeting of representatives of pharmacy firms at which any person makes any statement concerning whether any firm will enter into or refuse to enter into any third-party payer prescription drug plan; and for eight years, from providing comments or advice to any pharmacist or pharmacy firm on the desirability or appropriateness of entering into or refusing to enter into any third-party payer prescription drug plan.

Appearances

For the Commission: *Karen G. Bokat* and *Michael D. McNeely*.

For the respondent: *Alan Lewis*, Newburg, N.Y.

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 the Pharmaceutical Society of Orange County, Inc. has violated the provisions of said Act, 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 Pharmaceutical Society of Orange County, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, whose principal place of business is at the place of business or home of one of its officers. Respondent is an association of pharmacists who are employed in business for themselves, employed by other pharmacists, or retired. In 1986, respondent was affiliated with the Pharmaceutical Society of the State of New York, Inc. ("PSSNY").