

IN THE MATTER OF

T&N PLC

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

Docket C-3312. Consent Order, Nov. 8, 1990--Modifying Order, April 23, 1996

This order reopens a 1990 consent order -- that permitted the Manchester, England, corporation to acquire J.P. Industries, Inc., and required the respondent, for ten years, to obtain Commission approval before acquiring any engine bearing assets in the United States -- and this order modifies the consent order by terminating the provision requiring T&N to obtain prior Commission approval.

ORDER REOPENING AND MODIFYING ORDER

On January 4, 1996, T&N plc ("T&N" or "respondent"), the respondent named in the consent order issued by the Commission on November 8, 1990, in Docket No. C-3312 ("order"), filed its Request to Vacate Prior Approval Provision ("Request") in this matter.¹ T&N asks that the Commission reopen and modify the order 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 and Procedure, 16 CFR 2.51, and consistent with the Statement of Federal Trade Commission Policy Concerning Prior Approval And Prior Notice Provisions, issued on June 21, 1995 ("Prior Approval Policy Statement" or "Statement").² Paragraph XI of the order requires T&N to seek prior Commission approval to acquire certain entities engaged in the design, manufacture or sale in or to the United States of engine bearings. T&N requests that the Commission reopen and modify the order to vacate the prior approval provision of paragraph XI of the order, or, in the alternative, to substitute a prior notice provision for the prior approval provision of paragraph XI.³ The thirty-day public comment period on T&N's Request expired on February 26, 1996. No comments were received.

¹ T&N is a United Kingdom corporation that manufactures and sells automotive components, including thinwall engine bearings for sale in the United States aftermarket.

² 60 Fed. Reg. 39745-47 (Aug. 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13,241.

³ Request at 1.

The Commission, in its Prior Approval Policy Statement, "concluded that a general policy of requiring prior approval is no longer needed," citing the availability of the premerger notification and waiting period requirements of Section 7A of the Clayton Act, commonly referred to as the Hart-Scott-Rodino ("HSR") Act, 15 U.S.C. 18a, to protect the public interest in effective merger law enforcement. Prior Approval Policy Statement at 2. The Commission announced that it will "henceforth rely on the HSR process as its principal means of learning about and reviewing mergers by companies as to which the Commission had previously found a reason to believe that the companies had engaged or attempted to engage in an illegal merger." As a general matter, "Commission orders in such cases will not include prior approval or prior notification requirements." *Id.*

The Commission stated that it will continue to fashion remedies as needed in the public interest, including ordering narrow prior approval or prior notification requirements in certain limited circumstances. The Commission said in its Prior Approval Policy Statement that "a narrow prior approval provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for the provision, attempt the same or approximately the same merger." The Commission also said that "a narrow prior notification provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for an order, engage in an otherwise unreportable anticompetitive merger." *Id.* at 3. As explained in the Prior Approval Policy Statement, the need for a prior notification requirement will depend on circumstances such as the structural characteristics of the relevant markets, the size and other characteristics of the market participants, and other relevant factors.

The Commission also announced, in its Prior Approval Policy Statement, its intention "to initiate a process for reviewing the retention or modification of these existing requirements" and invited respondents subject to such requirements "to submit a request to reopen the order." *Id.* at 4. The Commission determined that, "when a petition is filed to reopen and modify an order pursuant to . . . [the Prior Approval Policy Statement], the Commission will apply a rebuttable presumption that the public interest requires reopening of

the order and modification of the prior approval requirement consistent with the policy announced" in the Statement. *Id.*

The presumption is that setting aside the prior approval requirement in this order is in the public interest. Nothing to overcome the presumption has been presented, and nothing in the record suggests that the respondent would engage in the same acquisition as alleged in the complaint. Accordingly, the Commission has determined to reopen the proceedings and modify the order to set aside the prior approval requirement.

The record in this case shows a credible risk that respondent could engage in future anticompetitive acquisitions that would not be reportable under the HSR Act. The complaint in this matter ("complaint") alleged that T&N's acquisition of J. P. Industries Inc. ("JPI") would substantially lessen competition within the United States in the manufacture and sale of thinwall engine bearings and tri-metal heavywall engine bearings in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The relevant geographic market is United States.

The complaint alleged that a substantial lessening of competition would result from the elimination of actual competition in the relevant markets; the enhancement of the likelihood of collusion or interdependent coordination between or among firms in the relevant markets; the elimination of potential competition in the relevant markets; and the elimination of JPI as a substantial independent competitive force.

There has been no showing that the competitive conditions that gave rise to the complaint and the order no longer exist. Moreover, the size of relevant transactions indicates that future acquisitions that would currently be covered by the provisions of paragraph XI of the order might not be subject to the premerger notification and waiting period requirements of the HSR Act.⁴ Accordingly, pursuant to the Prior Approval Policy Statement, the Commission has determined to modify paragraph XI of the order to substitute a prior notification requirement for the prior approval requirement.

Accordingly, *It is ordered*, That this matter be, and it hereby is, reopened; and

⁴ The divestitures made pursuant to the order were for prices well below the HSR filing thresholds.

It is further ordered, That paragraph XI of the order be, and it hereby is, modified, as of the effective date of this order, to read as follows:

XI.

It is further ordered, That, for a period of ten (10) years from the date on which this order becomes final, T&N shall not, directly or indirectly, acquire any stock, share capital, assets or equity interest in any concern, corporate or non-corporate, engaged in the design, manufacture or sale in or to the United States of any engine bearings without Prior Notification to the Commission, if such concern:

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

B. At the time of the acquisition designs or manufactures plain engine bearings in the United States; or

C. Had net sales of thinwall plain engine bearings in or to the United States of one and one-half (1.5) million dollars or more in any of the three (3) calendar years preceding the date of the acquisition, or had net sales of tri-metal heavywall engine bearings in or to the United States of three hundred thousand (300,000) dollars or more in any of the three (3) calendar years preceding the date of the acquisition.

Provided, however, that nothing in this paragraph shall prohibit T&N from acquiring used machinery or equipment associated with or related to the manufacture of plain engine bearings from an entity that continues, to substantially the same extent as before the acquisition, in the business of manufacturing such bearings and selling them in or to the United States; and provided, further, that nothing in this paragraph shall prohibit T&N from purchasing from any such entity any plain engine bearings for resale in the United States in the ordinary course of business.

On the anniversary of the date on which this order becomes final, and on every anniversary thereafter for the following nine (9) years, T&N shall file with the Commission a verified written report of its compliance with this paragraph.

"Prior Notification to the Commission" required by this paragraph shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended (hereinafter referred to as "the Notification Form"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of respondent and not of any other party to the transaction. Respondent shall provide the Notification Form to the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information, respondent shall not consummate the transaction until twenty (20) days after substantially complying with such request for additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. Notwithstanding, prior notification shall not be required by this paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

Complaint

121 F.T.C.

IN THE MATTER OF

ILLINOIS TOOL WORKS 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 C-3651. Complaint, April 23, 1996--Decision, April 23, 1996

This consent order requires Illinois Tool Works, among other things, to divest all of Hobart Brothers' assets and businesses relating to industrial power sources and industrial engine drives to Prestolite Electric Inc. or another Commission-approved acquirer.

Appearances

For the Commission: *Ann B. Malester, Christine Perez, Steven K. Bernstein and William Baer.*

For the respondent: *James Wooten and Stewart Hudnut*, in-house counsel, Glenview, IL.

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, Illinois Tool Works Inc., a corporation subject to the jurisdiction of the Commission, has agreed to acquire all of the capital stock of Hobart Brothers Company ("Hobart"), a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. 45, and that such an acquisition, if consummated, would violate 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; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent Illinois Tool Works Inc. ("ITW") is a corporation organized and existing under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at