

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)
) Civil No. 973737
 Plaintiff,)
) Judge Avern Cohn
 v.)
)
 CROSS & TRECKER CORPORATION;)
 THE CROSS COMPANY; and)
 KEARNEY & TRECKER CORPORATION,)
)
 Defendants.)

COMPETITIVE IMPACT STATEMENT

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. §16(b)-(h), the United States files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

NATURE AND PURPOSE OF THE PROCEEDING

On September 25, 1979, the United States filed a civil antitrust Complaint alleging that the acquisition of The Cross Company ("Cross") and Kearney & Trecker Corporation ("K&T") by Cross & Trecker Corporation ("Cross & Trecker") violated Section 7 of the Clayton Act, 15 U.S.C. §18.

The Complaint alleges that the 1979 acquisition of Cross and K&T by Cross & Trecker eliminated potential competition between Cross and K&T in the manufacture and sale of machining centers and of head changers, eliminated Cross as a potential competitor in the manufacture and sale of machining centers and head changers throughout the United States, and may have substantially lessened the potential for increased competition in the manufacture and sale of machining centers and head changers.

The Complaint seeks a judgment by the Court that the acquisition be declared in violation of Section 7 of the Clayton Act. It also asks that Cross & Trecker be ordered to divest all its interest in either Cross or K&T or both and that

Cross and K&T be permanently enjoined from acquiring any interest in or merging in any way with each other.

II

DESCRIPTION OF THE PRACTICES GIVING RISE TO
THE ALLEGED VIOLATION OF THE ANTITRUST LAWS

Cross is a Michigan corporation with approximately \$138,848,000 in net sales in 1978. Cross is engaged in the manufacture and sale of metal cutting machine tools. Approximately 75 percent of Cross's sales in 1978 were of transfer machines. A transfer machine is a machine tool that automatically moves a work piece through a series of stations that perform metal cutting and other functions.

K&T is a Wisconsin corporation with 1978 net sales of approximately \$96,324,000. K&T is engaged in the manufacture and sale of metal cutting machine tools. In 1978, over half of K&T's sales were in machining centers and head changers. K&T was the largest seller in the United States of machining centers, with approximately 35 percent of that market. K&T was the second largest domestic seller of head changers.

The Complaint alleges that prior to the merger, Cross attempted to develop and to sell a horizontal machining center and a head changer and that Cross discontinued its efforts because of the acquisition. A horizontal machining center is a multi-purpose metal cutting machine tool that automatically changes individual tools. It has a relatively low rate of production. A head changer is a multi-purpose metal cutting machine tool that has cutting tools mounted in automatically interchangeable heads. A head changer normally has a higher rate of production than a machining center.

In or about May 1976, Cross purchased engineering and other technical and business information related to the manufacture of several models of the Burr Transfercenter. Some models of the Burr Transfercenter were machining centers, and other models were machining centers that also had automatic head changers. Thereafter, Cross worked on the development of a machine tool which it called the Multi-Center, using as an

initial basis the Burr designs. The Multi-Center was to be a machining center with both an automatic tool changer and an automatic head changer. At the time of the acquisition, Cross's development of the Multi-Center was approximately 80 percent complete, and Cross had advertised the product and had submitted quotations on the Multi-Center to two customers.

The Complaint further alleges that the acquisition eliminated potential competition between Cross and K&T in the manufacture and sale of machining centers and head changers, eliminated Cross as a potential competitor in the manufacture and sale of machining centers and head changers, and may have substantially lessened the potential for increased competition in the manufacture and sale of machining centers and head changers, all in violation of Section 7 of the Clayton Act.

III

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The proposed Final Judgment states that it constitutes no admission by any party with respect to any issue of fact or law.

Section IV of the proposed Final Judgment requires the defendants to divest themselves of the Multi-Center No. 100 assets within twelve (12) months from the date of entry of the Judgment. The Multi-Center No. 100 assets to be divested are all of the following items: the rights to manufacture and sell the Burr Transfercenter that Cross acquired in May 1976, as well as the engineering, marketing, and other information relating to the Burr Transfercenter acquired at that time; the drawings, designs, and similar documents relating to the development or manufacture of the Multi-Center No. 100; and all licenses either owned by the defendants or licensed by the defendants with the right to grant sublicenses that would be infringed by a machining center or a head changer developed by

the purchaser from the designs for the Multi-Center No. 100. This obligation to divest is absolute and unconditional.

Section V of the proposed Final Judgment provides that the Court will appoint a Trustee within a specified time. If the defendants do not accomplish this divestiture within twelve (12) months, title to the Multi-Center No. 100 assets will vest in the Trustee, and the Trustee will have full authority to sell the assets.

Section VI of the proposed Final Judgment requires the assets to be sold at whatever price and terms are available. The purchaser must certify that it intends to use the assets to develop or to offer for sale a machining center or a head changer. For 12 months immediately following the divestiture, defendants must make available to the purchaser engineering, technical, sales, and marketing employees of the defendants who have sufficient knowledge and expertise to assist the purchaser in understanding and using the assets, in developing a marketing strategy, and in training sales personnel to sell a machining center or a head changer developed through the use of the assets. These employees must be made available to the purchaser at defendants' out-of-pocket cost. Section VI also provides for periodic meetings with the Court to discuss the progress of the efforts to divest the assets.

Section VII of the proposed Final Judgment gives the United States the right to object to a prospective purchaser proposed by either the defendants or the Trustee. If the United States maintains its objection to the proposed divestiture, the divestiture will not be consummated unless the Court approves it.

Section VIII of the proposed Final Judgment prohibits Cross & Trecker, Cross, and K&T from acquiring any stock or assets of or any financial interest in any person that manufactures and sells machining centers or head changers in the United States.

Section III of the proposed Final Judgment makes the Judgment applicable to each defendant and to the officers, directors, agents, employees, subsidiaries, successors, and assigns of each defendant, as well as all other persons in active concert or participation with any of them who have received actual notice of the Final Judgment.

Section XI makes the Final Judgment effective for ten years from the date of its entry.

Section XII of the proposed Final Judgment states that entry of this Judgment is in the public interest. Under the provisions of the Antitrust Procedures and Penalties Act, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed Judgment is in the public interest.

Standard provisions similar to those found in other anti-trust Final Judgments entered by consent are contained in Section I (jurisdiction of the Court), Section IX (investigation and reporting requirements), and Section X (retention of jurisdiction by the Court).

It is anticipated that the relief provided by the proposed Final Judgment will have a salutary effect on competition in the machining center and head changer markets. The acquisition eliminated Cross as a potential competitor in these markets. The divestiture will enable the purchaser of the Multi-Center No. 100 assets to become an actual competitor in these markets. Divestiture of the assets, therefore, should increase the competition in each of these markets.

IV

REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

After entry of the proposed Final Judgment, any potential private plaintiff that might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal or equitable relief that it may have had if the Final Judgment had not been entered. The Final Judgment may not be used, however, as prima facie evidence in private

litigation, pursuant to Section 5(a) of the Clayton Act, as amended, 15 U.S.C. §16(a).

V

PROCEDURES AVAILABLE FOR MODIFICATION
OF THE PROPOSED FINAL JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments within the 60-day period provided by the Act to John A. Weedon, Chief, Great Lakes Office, Antitrust Division, United States Department of Justice, 995 Celebrezze Federal Building, Cleveland, Ohio 44199 (telephone: 216-522-4070). These comments and the Department's responses to them will be filed with the Court and published in the Federal Register.

All comments will be given due consideration by the Department of Justice. The Department remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry if it should determine that some modification is necessary. Further, Section X of the proposed Judgment provides that the Court retains jurisdiction over this action for the life of the Final Judgment and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification, interpretation, or enforcement of the Judgment after its entry.

VI

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The alternative to the proposed Final Judgment considered by the Antitrust Division was a full trial on the merits and on relief. The Division considers the proposed Judgment to be of sufficient scope and effectiveness to make a trial unnecessary, since it provides appropriate relief against the violations alleged in the Complaint.

While the Complaint sought divestiture of Cross, K&T, or both, the principal anticompetitive effect of the acquisition was the elimination of Cross as a potential entrant into the

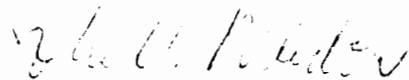
machining center and head changer markets. The principal objective of the Complaint was to re-establish Cross as a potential competitor in these markets. Although the proposed Final Judgment does not cause Cross to be a potential entrant, it does provide that another company, subject to the approval of the plaintiff or the Court, will be able to fill the void left by Cross when it abandoned its development of a machining center and a head changer and merged with K&T.

VII

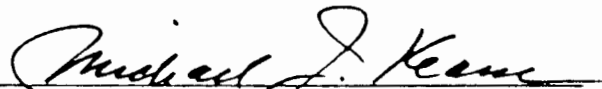
DETERMINATIVE MATERIALS AND DOCUMENTS

No materials or documents were considered determinative by the United States in formulating the proposed Final Judgment. Consequently, none is being filed pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. §16(b).

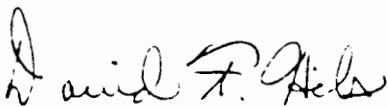
Respectfully submitted,



JOHN A. WEEDON



MICHAEL J. KEANE

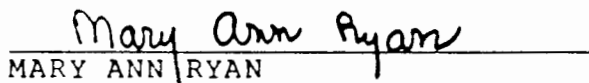


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