

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 ) Civil Action No. 973737  
 v. )  
 ) Filed: March 31, 1981  
 CROSS & TRECKER CORPORATION; )  
 THE CROSS COMPANY; and )  
 KEARNEY & TRECKER CORPORATION, )  
 )  
 Defendants. )

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on September 25, 1979, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or any admission by any party with respect to any such issue;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon consent of the parties hereto, it is hereby

ORDERED, ADJUDGED, AND DECREED as follows:

I

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against each defendant under Section 7 of the Clayton Act (15 U.S.C. § 18).

II

As used in this Final Judgment:

(A) "Defendant" means Cross & Trecker Corporation, The Cross Company, Kearney & Trecker Corporation, or any of them as the context may require;

(B) "Cross & Trecker" means Cross & Trecker Corporation and each of its subsidiaries, affiliates, successors, and assigns;

(C) "Cross" means The Cross Company and each of its subsidiaries, affiliates, successors, and assigns;

(D) "K&T" means Kearney & Trecker Corporation and each of its subsidiaries, affiliates, successors, and assigns;

(E) "Machine tool" means a stationary, power-driven machine that cuts metal;

(F) "Machining center" means a machine tool that has interchangeable cutting tools, changes tools automatically, has a horizontal spindle, and is numerically controlled;

(G) "Head changer" means a machine tool that has cutting tools mounted in interchangeable heads, changes heads automatically, has horizontal spindles, and is numerically controlled;

(H) "Multi-Center No. 100" means any product that Cross referred to by that name;

(I) "Multi-Center No. 100 assets" means the following:

(1) all the rights to manufacture and sell the Burr Transfercenter in North America that Cross acquired pursuant to its agreement dated May 6, 1976 with Deutsche Industrie Anlagen GmbH;

(2) all the engineering, technical, marketing, and other information regarding the Burr Transfercenter that Cross acquired pursuant to its agreement dated May 6, 1976 with Deutsche Industrie Anlagen GmbH;

(3) all the plans, drawings, designs, sketches, proposal drawings, bills of materials, and other information in the possession, custody, or control of Cross & Trecker that constitute or refer or relate to the planning, engineering, design, development, or manufacture of the Multi-Center No. 100;

(4) a royalty-free non-exclusive license under any patent which is owned by a defendant on the date of entry of this Final Judgment and which would be infringed by a Multi-Center No. 100, or by any assembly, subassembly or component thereof, built in accordance with the plans, drawings, designs, sketches or proposal drawings referred to in (3) above;

(5) a non-exclusive sublicense under any patent which is licensed (with the right to grant sublicenses) to a defendant on the date of entry of this Final Judgment and which would be infringed by a Multi-Center No. 100, or by any assembly, subassembly or component thereof, built in accordance with the plans, drawings, designs, sketches or proposal drawings referred to in (3) above, such sublicense to be at the royalty rate paid by such defendant under such license or at the sublicensee royalty rate specified in the license if the license specifies such a royalty rate.

(J) "Person" means any individual, corporation, partnership, firm, association, or other business or legal entity.

### III

This Final Judgment applies to the defendants and to their officers, directors, agents, employees, subsidiaries, successors, and assigns, and to all other persons in active

concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

(A) Within twelve (12) months after the date of entry of this Final Judgment, the defendants shall divest themselves of the Multi-Center No. 100 assets.

(B) The obligation to divest imposed by paragraph IV(A) of this Final Judgment is absolute and unconditional and shall be to a person first approved by this Court.

V

(A) If the defendants have not divested the Multi-Center No. 100 assets within 10 months after the date of entry of this Final Judgment, and upon the application of the plaintiff, the Court shall appoint a Trustee to accomplish the divestiture. The plaintiff shall nominate a person for appointment by the Court. The Trustee shall use the time between the date of his appointment and the end of the period specified in paragraph IV(A) of this Final Judgment to acquaint himself with the Multi-Center No. 100 assets and to plan a strategy for the sale of the Multi-Center No. 100 assets.

(B) At the end of the period specified in paragraph IV(A) of this Final Judgment, all of the defendants' right, title, and interest in and to the Multi-Center No. 100 assets shall vest in the Trustee.

(C) The defendants shall provide to the Trustee such information and assistance as the Trustee may request to assist the Trustee in selling the Multi-Center No. 100 assets.

(D) The Trustee shall serve at the cost and expense of the defendants on such terms and conditions as this Court may set. The Trustee shall account to the Court for all monies derived from the divestiture and all expenses incurred. After approval by this Court of the account of the Trustee, all monies derived by the Trustee from the divestiture, after expenses, shall be turned over to the defendants and the trust shall be terminated.

VI

(A) The divestiture ordered by this Final Judgment, whether accomplished by the defendants or by a Trustee, shall be at whatever price and terms are available and to a purchaser that certifies in writing to the Court that it intends in good faith to use the Multi-Center No. 100 assets in developing or offering for sale a machining center or a head changer.

(B) The defendants are ordered and directed to make available to the purchaser during the twelve (12) month period following the date of divestiture, whether accomplished by the defendants or by a Trustee: (1) such of their engineering and technical employees, as agreed by the defendants and the purchaser, as have knowledge and expertise sufficient to enable such employees to assist the purchaser to understand and use the Multi-Center No. 100 assets; (2) such of their sales and marketing employees, as agreed by the defendants and the purchaser, as have knowledge and expertise sufficient to enable such employees to assist the purchaser 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 Multi-Center No. 100 assets. Such employees shall be made available to the purchaser at defendants' out-of-pocket cost. Nothing contained in this paragraph VI(B) shall require the defendants or their employees to disclose any of their confidential or trade secret information except insofar as the same may be included in the Multi-Center No. 100 assets.

(C) The defendants shall submit a written report to this Court and to the plaintiff thirty (30) days after the date of entry of this Final Judgment. The Trustee shall submit a written report to this Court and to the plaintiff thirty (30) days after the date of the Trustee's appointment. Subsequent reports shall be submitted by the defendants or by the Trustee every sixty (60) days until the divestiture is accomplished. The reports shall set forth in reasonable detail the steps taken by the defendants or by the Trustee to accomplish the divestiture during the previous sixty (60) days and the steps to be taken in the next sixty (60) days. The reports shall set forth the name and address of each person with which the defendants or the Trustee have communicated as a potential purchaser, the substance of each communication, and, if applicable, the name of each representative of the defendants that participated in the communication. Additional information or documents shall be provided if requested by the plaintiff.

(D) The plaintiff, the defendants, and the Trustee, if any, shall meet with the Court every one hundred twenty (120) days until the divestiture is accomplished to discuss the progress of the defendants' or the Trustee's efforts to divest the Multi-Center No. 100 assets. Other meetings may be scheduled by the Court at the request of any party or of the Trustee.

## VII

(A) At least thirty (30) days before a contract of sale is entered into pursuant to this Final Judgment, the plaintiff shall receive from the defendants or from the Trustee the name and address of the proposed purchaser and the name and address of a representative of the purchaser who can provide information about the purchaser. At that time, the defendants or the Trustee shall also provide a copy of the proposed contract of sale together with all other pertinent documents and information about the divestiture. The plaintiff shall have the right to request additional information from the defendants, the Trustee or the proposed purchaser about the proposed divestiture.

(B) Within twenty (20) days after the plaintiff has received all the information requested from the defendants, the Trustee, or the proposed purchaser, the plaintiff shall advise the defendants and the Trustee, if any, in writing of the plaintiff's objections to or approval of the proposed divestiture.

(C) If the plaintiff objects to the proposed divestiture, then the contract of sale shall not be consummated unless (1) the plaintiff notifies the defendants and the Trustee, if any, in writing of any subsequent approval or unless (2) the Court approves the divestiture at a hearing at which the defendants shall have the burden of proving that the contract of divestiture is proper under the terms of this Final Judgment and that there is a substantial likelihood that the purchaser will develop or offer for sale a machining center or head changer within the reasonably near future.

### VIII

Cross & Trecker, Cross, and K&T, individually and collectively, are enjoined and restrained 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.

### IX

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted:

(1) Access during the office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees, and agents of such defendant, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to any defendant's principal office, such defendant shall submit such written reports, under oath



if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(C) If at the time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days' notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

X

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the

modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XI

This Final Judgment will expire ten (10) years from its date of entry.

XII

Entry of this Final Judgment is in the public interest.

Dated: July 6, 1981.

/s/ Judge Avern Cohn  
UNITED STATES DISTRICT JUDGE