

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF THE DISTRICT OF COLUMBIA

| | | |
|------------------------------|---|--------------------------|
| UNITED STATES OF AMERICA, |) | |
| Antitrust Division |) | |
| U.S. Department of Justice |) | |
| 555 Fourth Street, N.W. |) | |
| Washington, D.C. 20001 |) | Plaintiff,) |
| |) | |
| v. |) | Civil Action No. 89-3333 |
| |) | |
| BAKER HUGHES INCORPORATED, |) | Filed: 12/13/89 |
| 3900 Essex Lane |) | |
| Houston, Texas 77027 |) | Judge Gerhard A. Gesell |
| |) | |
| EIMCO SECOMA S.A., |) | |
| Avenue de Lattre de Tassigny |) | |
| 69330 Meyzieu, France |) | |
| |) | |
| and |) | |
| |) | |
| OY TAMPELLA AB |) | |
| P.O. Box 256, Lapintie 1 |) | |
| SF-33001 Tampere, Finland |) | Defendants.) |
| |) | |

COMPLAINT TO ENJOIN VIOLATION OF THE CLAYTON
ACT AND FOR CIVIL PENALTIES FOR VIOLATION OF
PREMERGER REQUIRMENTS OF HART-SCOTT-RODINO ACT

The United States of America, plaintiff, by its attorneys,
acting under the direction of the Attorney General of the
United States, brings this civil action to obtain civil
penalties and equitable and other relief as is appropriate
against the defendants named herein and complains and alleges
as follows:

-- COUNT ONE

I.

JURISDICTION AND VENUE

1. This count is filed and this action is instituted under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain the violation by defendants, as hereinafter alleged, of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

2. Baker Hughes, Incorporated, transacts business and is found in this District within the meaning of 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

3. Eimco Secoma S.A. is a French corporation. Venue is properly based in this District under 15 U.S.C. § 22 and 28 U.S.C. § 1391(d).

4. Oy Tampella AB is a Finnish corporation. Venue is properly based in this District under 15 U.S.C. § 22 and 28 U.S.C. § 1391(d).

5. Venue in this District is also proper by virtue of the defendants' consent to the maintenance of this action as provided in stipulations relating hereto.

II.

DEFINITIONS

5. "HHI" means the Herfindahl-Hirschman Index, a measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty,

and twenty percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

6. "Drilling rig" means a self-powered carrier vehicle, equipped with a power pack and control devices, and onto which one or more adjustable booms, each with an attached drill, is mounted.

7. "Hardrock" means rock that cannot be penetrated efficiently by a drill applying less than approximately 20,000 pounds per square inch ("PSI") of force. Examples of hardrock mines include gold, silver, copper, lead and zinc mines. Hardrock mines can be distinguished from softrock mines (e.g., coal) and semi-hardrock mines (e.g., gypsum) which can be mined by drills applying less than 10,000 PSI of force.

8. "Hardrock hydraulic drilling rig" means a drilling rig that is equipped with a hydraulically-powered rotary percussive drill that applies force sufficient to penetrate hardrock by simultaneously rotating and pounding a drill bit into the rock. Hardrock hydraulic drilling rigs are designed for use in underground mines to develop and stabilize mine shafts and tunnels and to produce ore.

III.

THE DEFENDANTS

9. Oy Tampella AB ("Tampella") is made a defendant herein. Tampella is a Finnish corporation with its principal offices in Tampere, Finland. Tampella, through its Tamrock Division ("Tamrock"), is the leading seller of hardrock hydraulic drilling rigs in the United States and the world. In the United States, Tamrock sells and services hardrock hydraulic drilling rigs, produced principally at its Myllypuro, Finland plant, through Tamrock, Inc., a wholly owned subsidiary of Tampella. Tamrock, Inc. has its headquarters in Northbrook, Illinois. In 1988, Tamrock had United States sales of hardrock hydraulic drilling rigs of about \$5 million and worldwide sales of about \$50 million.

10. Baker Hughes Incorporated ("Baker Hughes") is made a defendant herein. Baker Hughes, a corporation existing under the laws of the state of Delaware, has its principal offices in Houston, Texas. Baker Hughes, through its subsidiary Eimco Secoma S.A., manufactures and sells hardrock hydraulic drilling rigs worldwide.

11. Eimco Secoma S.A. ("Secoma") is made a defendant. Secoma, a wholly owned subsidiary of Baker Hughes, is a French corporation with its principal offices and plant in Meyzieu, France. Based upon sales in 1986 through 1988, Secoma is the third largest seller of hardrock hydraulic drilling rigs in the United States and in the world. In 1988, Secoma's United States and worldwide sales of hardrock hydraulic drilling rigs and related spare parts were about \$1 million and \$20 million,

respectively. Secoma sells and services hardrock hydraulic drilling rigs in the United States through Secoma U.S., Inc., a wholly owned subsidiary. Secoma U.S., Inc. has its headquarters in Salt Lake City, Utah.

IV.

TRADE AND COMMERCE

12. Hardrock hydraulic drilling rigs are the current, state of the art machines used to develop and stabilize tunnels and shafts to prevent cave-ins and to produce the ore located in underground hardrock mines. There are three types of hardrock hydraulic drilling rigs: face drills, roof bolters and longhole drills. Face drills, by far the most common of the three types, drill holes horizontally into the face of a tunnel or a mine shaft. Explosives are inserted into the holes and the rock is broken through blasting. Major producers of face drills sell a number of models of face drills which are designed to drill different sized tunnels and shafts. In many mines, face drills are also used to produce ore. Roof bolters drill holes into the ceiling or floor of a mine. Structural reinforcement, usually a bolt and a brace, are then inserted into the hole to prevent cave-ins. Longhole drills, the least common type of hardrock hydraulic drilling rigs, are production drills used in some underground mines. Each type of hardrock hydraulic drilling rig is equipped with a hydraulic rotary percussive drill that bores into hardrock by simultaneously rotating and pounding the drill bit. Each type and model of hardrock hydraulic drilling rig produced by Secoma is in direct competition with one produced by Tamrock.

13. In the United States, the principal buyers of hardrock hydraulic drilling rigs are operators of hardrock underground mines. Performance, serviceability, reliability, price and a supplier's proven ability to supply spare parts and technical service expeditiously are the primary factors considered by mines in selecting a hardrock hydraulic drilling rig. Since hardrock hydraulic drilling rigs perform one of the most critical functions in underground mining, buyers must be confident that hardrock hydraulic drilling rigs will operate efficiently and at high utilization rates and that spare parts and technical services will be promptly provided in the event of equipment breakdown.

14. There is no reasonable substitute product to which significant numbers of mines would turn in response to a small but significant and nontransitory increase in the price of hardrock hydraulic drilling rigs. Over the last decade, hardrock hydraulic drilling rigs have displaced technologically outdated pneumatically-powered drilling rigs. Pneumatic drilling rigs are about 50 percent less efficient than hydraulic drilling rigs on a cost per meter drilled basis, are substantially noisier and produce an exhaust mist that reduces visibility in underground mines. As a result, virtually no pneumatic drilling rigs are sold in the United States.

15. Manufacturers of hardrock hydraulic drilling rigs sell and compete with one another for sales throughout the United States. Virtually all hardrock hydraulic drilling rigs sold in the United States are sold by manufacturers with nationwide

distribution and a commitment to the United States market, as well as established reputations for making efficient and reliable products, providing reliable domestically-based technical services and timely spare parts delivery from warehouses in the United States.

16. The sale of hardrock hydraulic drilling rigs constitutes a line of commerce and relevant product market, and the United States as a whole is a section of the country and a relevant geographic market in which hardrock hydraulic drilling rigs are sold, within the meaning of Section 7 of the Clayton Act. In 1988 total sales in the United States of hardrock hydraulic drilling rigs were about \$10 million.

17. Tamrock and Secoma are direct competitors in the United States hardrock hydraulic drilling rig market. Tamrock is the dominant seller of hardrock hydraulic drilling rigs in the United States. In 1988, Tamrock sold about 58 percent of all hardrock hydraulic drilling rigs in the United States. During that same year, Secoma accounted for approximately 18 percent of total sales in the United States.

18. The United States hardrock hydraulic drilling rig market is highly concentrated and would become substantially more so as a result of the violation herein alleged. Over the three year period 1986 through 1988, Tamrock, Secoma, and two other competitors, Atlas Copco of Sweden, and the Gardner Denver subsidiary of Cooper Industries, Inc., accounted for all of the hardrock hydraulic drilling rigs sold in the United States. During that three year period, the premerger HHI for

unit sales of hardrock hydraulic drilling rigs in the United States was about 2878. Using aggregate unit sales for the three years, the HHI would increase by about 1425 to about 4303. Based on 1988 unit sales, the HHI for the sale of hardrock hydraulic drilling rigs in the United States was about 3975. The proposed transaction would increase the HHI by about 2133 points to about 6108. A market with a post-acquisition HHI of 1000 is moderately concentrated, and a market with a post-transaction HHI of 1800 is highly concentrated.

19. Entry into the manufacture and sale of hardrock hydraulic drilling rigs is difficult because of, among other things, the time and cost required to obtain engineering expertise, develop the necessary technology to design a competitive hardrock hydraulic drilling rig, plan the manufacture and sale of hardrock hydraulic drilling rigs, create a sales and technical service organization, and establish a reputation for producing efficient and reliable equipment and expeditious service and spare parts deliveries.

20. Tamrock, Secoma and Atlas-Copco compete world-wide and account for about 70 percent of hardrock hydraulic drilling rig sales throughout the world. Entry into the United States hardrock hydraulic drill rig market by competitors in the other regions of the world is difficult and time consuming. To compete in the United States, among other things, a firm must establish a reputation with United States mines for the efficiency, serviceability, and reliability of its product under actual underground drilling conditions and must also

establish and maintain in the United States both a capable sales and technical services network and a warehouse system for expeditious delivery of spare parts. Entry by firms not currently selling hardrock hydraulic drilling rigs in the United States is also difficult because of the ability of firms in the market to price discriminate in sales to selected customers.

21. The defendants import substantial quantities of hardrock hydraulic drilling rigs into the United States. The defendants provide services and ship hardrock hydraulic drilling rigs and spare parts across state lines to mines located throughout the United States. The sale and servicing of hardrock hydraulic drilling rigs are within the flow of and substantially affect interstate commerce.

V.

VIOLATION ALLEGED

22. Tampella and Baker Hughes have entered into an agreement under which Tamrock, AG, a wholly owned Swiss subsidiary of Tampella, will acquire all of the stock of Eimco Secoma S.A. from Baker Hughes for about \$15 million. Thereafter, Tampella would manage and control Secoma, eliminating a competitor in the United States hardrock hydraulic drilling rig market. The parties plan to consummate the transaction on December 15, 1989.

23. The effects of the proposed acquisition of Secoma by Tampella may be substantially to lessen competition in interstate trade and commerce in violation of Section 7 of the

Clayton Act in the following ways, among others:

- (a) Actual and potential competition between Tampella and Secoma in the market for the sale of hardrock hydraulic drilling rigs in the United States will be eliminated; and
- (b) Competition generally in the market for the sale of hardrock hydraulic drilling rigs in the United States may be substantially lessened.

VI.

PRAYER

WHEREFORE, plaintiff prays:

1. That preliminary and permanent injunctions be issued preventing and restraining the defendants and all persons acting on their behalf from consummating the transaction alleged in paragraph 22 or from going forward with any other agreement or plan which would give Tampella, either directly or indirectly, control over the securities, business or assets of Secoma.
2. That the proposed acquisition be adjudged a violation of Section 7 of the Clayton Act.
3. That the plaintiff have such other and further relief as the nature of this case may require and as this Court may deem just and proper.
4. That the plaintiff recover the costs of this action.

-- COUNT TWO

I.

JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted under Section 7A of the Clayton Act, 15 U.S.C. § 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("Hart-Scott-Rodino Act"), to recover a civil penalty for a violation of the Hart-Scott-Rodino Act.

2. This Court has jurisdiction over the defendant and over the subject matter of this action pursuant to 15 U.S.C. § 18a(g), and 28 U.S.C. §§ 1331, 1337, 1345, and 1355.

3. Oy Tampella AB is a Finnish corporation. Venue is properly based in this District under 28 U.S.C. §§ 1391(b), 1391(c), 1391(d) and 1395(a) and 15 U.S.C. § 22.

II.

THE DEFENDANT

4. Oy Tampella AB ("Tampella") is made a defendant herein. Each and every allegation contained in paragraph 9 of Count One is here realleged with the same force and effect as though said paragraph was set forth in full detail.

III.

BAKER HUGHES, INCORPORATED

5. Baker Hughes, Incorporated ("Baker Hughes") is a corporation existing under the laws of the state of Delaware, and has its principal offices in Houston, Texas.

IV.

VIOLATION ALLEGED

6. The Hart-Scott-Rodino Act, 15 U.S.C. § 18a(a), prohibits certain acquisitions of voting securities or assets until a notification has been filed with the Department of Justice and the Federal Trade Commission and a waiting period has expired.

7. Section (d)(1) of the Hart-Scott-Rodino Act, 15 U.S.C. § 18A(d)(1), authorizes the Federal Trade Commission, with the concurrence of the Antitrust Division of the Department of Justice, to require that the notification required by the Act be in such form and contain such documentary material and information relevant to a proposed transaction as is necessary and appropriate to determine whether such acquisition may, if consummated, violate the antitrust laws.

8. Among the documentary material required to be submitted as part of a premerger notification are studies, surveys, analyses and reports which were prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) for the purpose of evaluating or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets. 16 C.F.R. § 800 et. seq. These documents are required in response to Item 4(c) of the Notification and Report Form.

9. Both the defendant and Baker Hughes at all times pertinent to this proceeding have been engaged in commerce, or in activities affecting commerce, within the meaning of Section (a)(1) of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a(a)(1) and Section 1 of the Clayton Act, 15 U.S.C. § 12.

10. Both the defendant and Baker Hughes have assets or sales above the threshold established by Section (a)(2) of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a(a)(2). Baker Hughes has total net sales in excess of \$100 million, and Tampella has total net sales in excess of \$10 million.

11. On or about July 31, 1989, defendant, through a subsidiary that it controls, acquired assets in the United States from Baker Hughes for about \$74 million. As a result of that transaction, defendant held an aggregate total amount of assets of Baker Hughes in excess of \$15 million. 15 U.S.C. § 18(a)(3).

12. The transaction described in paragraph 11, by which defendant acquired an aggregate total amount of assets of Baker Hughes in excess of \$15 million, was subject to the notification and waiting period requirements of the Hart-Scott-Rodino Act and the regulations promulgated thereunder, 16 C.F.R. § 800 et seq. The Hart-Scott-Rodino Act and regulations required Tampella, as the ultimate parent entity of the subsidiary making the acquisition, to file a notification and to observe a waiting period before acquiring an aggregate total amount of assets of Baker Hughes in excess of \$15 million.

13. On May 31, 1989, defendant and Baker Hughes filed notification and report forms for a transaction that included, in part, the assets subject to the transaction described in paragraph 11. Defendant and Baker Hughes subsequently restructured the proposed transaction and on July 24, 1989, filed notification and report forms for the transaction described in paragraph 11. On July 25, 1989, the Federal Trade Commission and the Department of Justice granted the defendant and Baker Hughes early termination of the waiting period.

14. Defendant's Notification and Report Form, filed July 24, 1989, did not include a document entitled "Business Plan For Acquiring Seven Baker Hughes Divisions Including All Six Divisions In Baker Hughes Mining Equipment And One Division in Baker Hughes Process Equipment" ("Business Plan"). The "Business Plan" was prepared for officers of Tampella directly involved in the transaction described in paragraph 11 and evaluates and analyzes the proposed acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets. The "Business Plan" was required to have been submitted pursuant to Item 4(c) of the Notification and Report Form.

15. As a result of defendant's failure to submit the "Business Plan" as required by Item 4(c) of the Notification and Report Form, defendant did not comply with the reporting and waiting period requirements of the Hart-Scott-Rodino Act and regulations.

16. On October 6, 1989, defendant submitted the "Business Plan" to the Department of Justice in connection with the plaintiff's investigation of the Secoma transaction which is the subject of Count One of the Complaint. On November 27, 1989, the defendant submitted the "Business Plan" to the Federal Trade Commission.

17. Section (g)(1) of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a(g)(1), provides that any person who fails to comply with the Act shall be liable to the United States for a civil penalty of not more than \$10,000 for each day during which such person is in violation of the Act.

V.

PRAYER

WHEREFORE, Plaintiff prays:

1. That the Court adjudge and decree that defendant's purchase of assets of Baker Hughes on July 31, 1989 was in violation of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a.
2. That defendant be ordered to pay to the United States the maximum civil penalty as provided by Section (g)(1) of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a(g)(1).

3. That the plaintiff have such other and further relief as the Court may deem just and proper.

Dated:

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