

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
c/o Department of Justice
Washington, D.C. 20530
Plaintiff,

v.

TITAN WHEEL INTERNATIONAL, INC.
2701 Spruce Street
Quincy, Illinois 62301

Defendant.

)
)
)
)
)
CASE NUMBER 1:96CV01040

JUDGE: Norma Holloway Johnson

DECK TYPE: Antitrust

DATE STAMP: 05/07/96

COMPLAINT FOR CIVIL PENALTIES FOR VIOLATION OF PREMERGER
REPORTING REQUIREMENTS OF THE 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 and at the request of the Federal Trade Commission brings this civil action to obtain monetary relief in the form of a civil penalty against the Defendant named herein, and alleges as follows:

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 Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act") to recover a civil penalty for a violation of the HSR Act.

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

3. Venue in this District is proper pursuant to 28 U.S.C. §§ 1391(b), 1391(c), 1395(a) and Section 12 of the Clayton Act, 15 U.S.C. § 22. Venue is also proper by virtue of the Defendant's consent, in the Stipulation relating hereto, to the maintenance of this action in this District.

THE DEFENDANT

4. Defendant Titan Wheel International, Inc. ("Titan"), is an Illinois corporation with its principal offices at 2701 Spruce Street, Quincy, Illinois. Titan manufactures and markets in the United States, among other products, steel wheels and rims for original equipment manufacturers in the agricultural and earthmoving/construction equipment markets, for government (principally military) vehicles, for recreation and specialty vehicles, and for the agricultural equipment aftermarket. At all times relevant to this complaint, Titan has had annual net sales or total assets in excess of \$100 million.

OTHER ENTITIES

5. Pirelli S.p.A. ("Pirelli") is a multi-national corporation engaged in world-wide manufacture and sale of cable and tires, among other products, and is incorporated in Italy with its principal offices at Viale Sarca 202, 20126 Milan,

Italy. Pirelli Armstrong Tire Corporation ("Pirelli Armstrong") is an indirect subsidiary of Pirelli. Pirelli Armstrong is a leading manufacturer in the United States of tires sold to the agricultural market as well as a manufacturer of passenger and light truck tires. Pirelli Armstrong's principal offices are at 500 Sargent Drive, New Haven, Connecticut. At all times relevant to this complaint, Pirelli has had annual net sales or total assets in excess of \$100 million.

THE HART-SCOTT-RODINO ACT AND RULES

6. The HSR Act requires certain acquiring persons and certain persons whose voting securities or assets will be acquired ("acquired persons") to file notifications with the Department of Justice and the Federal Trade Commission and to observe a waiting period before consummating certain acquisitions of voting securities or assets. 15 U.S.C. § 18a(a) and (b). The notification and waiting period are intended to give the federal antitrust agencies prior notice of and information about proposed transactions. The waiting period is also designed to provide the antitrust agencies an opportunity to investigate proposed transactions and determine whether to seek an injunction to prevent transactions that may violate the antitrust laws.

7. The notification and waiting period requirements of the Act apply to direct or indirect acquisitions when the Act's size-of-person and commerce tests are met and, inter alia, as a result of such acquisition, an acquiring person would hold an aggregate

total amount of the voting securities and assets of an acquired person in excess of \$15 million.

8. Section 801.1(c)(1) of the Premerger Notification Rules, 16 C.F.R. § 800 et seq. ("HSR Rules"), defines "hold" to mean beneficial ownership.

9. Where an acquisition is subject to the Act, the "ultimate parent entity" of an acquiring person is obligated by the HSR Rules to file premerger notification and report forms with the Federal Trade Commission and the Department of Justice and to observe the required waiting period before making the acquisition.

10. Pursuant to section (g)(1) of the HSR Act, 15 U.S.C. § 18a(g)(1), any person who fails to comply with any provision of the HSR Act shall be liable to the United States for a civil penalty of not more than \$10,000 per day for each day during which that person is in violation.

VIOLATION ALLEGED

11. At all times relevant to this Complaint, Defendant Titan and Pirelli Armstrong were engaged in commerce, or in activities affecting commerce, within the meaning of section 1 of the Clayton Act, 15 U.S.C. § 12, and section (a)(1) of the HSR Act, 15 U.S.C. § 18a(a)(1).

12. At all times relevant to this Complaint, Defendant Titan and Pirelli Armstrong had sales or assets above the

thresholds established by section (a) of the HSR Act, 15 U.S.C. § 18a(a).

13. During the summer of 1994, Titan was interested in acquiring Pirelli Armstrong's agricultural tire ("Ag Tire") business located at Pirelli Armstrong's Des Moines, Iowa facility ("Facility"), and Pirelli Armstrong was interested in selling that business to Titan. Titan's interest in acquiring the Ag Tire business at the Facility was predicated on the opportunity for Titan to negotiate a new collective bargaining agreement with the union representing the Facility's employees. On July 15, 1994, Pirelli Armstrong's collective bargaining agreement expired, and workers at the Facility went on strike.

14. On or about July 17, 1994, Titan and Pirelli Armstrong entered into an Asset Purchase Agreement ("Purchase Agreement") whereby Titan Tire Corporation, a wholly-owned subsidiary of Titan, agreed to acquire certain assets of Pirelli Armstrong related to the manufacture and production of agricultural tires at the Facility, and to enter into certain ancillary agreements (such as intellectual property licensing agreements and non-compete agreements). The Purchase Agreement covered, inter alia, all Ag Tire related personal property located at the Facility, such as machinery and equipment, all inventory, and customer and supplier lists.

15. On July 20, 1994, Titan filed a premerger Notification and Report Form ("Titan Notification") with the Federal Trade Commission and the Department of Justice to acquire assets in

excess of \$15 million of Pirelli. Pirelli filed its corresponding report on July 21, 1994.

16. The Titan Notification stated that the union employees at the Facility were on strike and that timing of the closing may affect the position of the parties with respect to negotiations, adding: "Pending the closing of the acquisition, Seller has agreed to permit Buyer to have immediate possession and use (but not title) to, and to operate, the acquired assets (and to hire the employees) at the Facility for Buyer's account, but subject to an 'unwinding' ... in the event that the closing does not occur."

17. Pursuant to the terms of the Purchase Agreement, Titan took immediate possession and operational control of the assets covered by the Purchase Agreement and of the Facility on or about July 17, 1994. Although the strike at the Facility continued, Titan engaged in some manufacturing of tires at the Facility prior to closing.

18. The Purchase Agreement, by including among its terms the transfer to Titan of immediate possession and operational control of the Pirelli Armstrong assets covered by the Purchase Agreement, had the effect, upon execution, of transferring to Titan beneficial ownership of those assets, including but not limited to inventory valued at \$15 million by the parties. The post hoc "unwind" provision did not vitiate Titan's beneficial ownership in the assets. As a result of that transfer of beneficial ownership, Titan acquired and held, on or about July

17, 1994, an aggregate total amount of assets of Pirelli having a value in excess of \$15 million.

19. On July 29, 1994, Titan and Pirelli Armstrong amended the Purchase Agreement by providing that the Purchase Agreement shall have no effect and not transfer beneficial ownership of the assets covered by the Purchase Agreement until the earlier of either a grant of early termination of the HSR Act waiting period or expiration of such waiting period. As of July 29, 1994, possession and operational control of the assets covered by the Purchase Agreement was returned to Pirelli Armstrong.

20. The Federal Trade Commission and the Justice Department granted early termination of the HSR Act waiting period on August 5, 1994.

21. The transaction described in paragraphs 13 through 18, by which Titan acquired beneficial ownership of Pirelli assets, was subject to the statutory notice and waiting provisions of the HSR Act. The HSR Act and the HSR Rules required Titan to file notification and observe a waiting period before acquiring an aggregate total amount of assets of Pirelli in excess of \$15 million.

22. Defendant Titan did not comply with the reporting and waiting period requirements of the HSR Act and HSR Rules before undertaking the acquisition described in paragraphs 13-19.

23. Defendant Titan was continuously in violation of the HSR Act during the period beginning on or about July 17, 1994, through July 29, 1994.

PRAYER

WHEREFORE, Plaintiff prays:

1. That the Court adjudge and decree that Defendant Titan's acquisition of assets of Pirelli from July 17, 1994, through July 29, 1994, was in violation of the HSR Act and that the Defendant was in violation of the HSR Act each day of the period from July 17, 1994, through July 29, 1994;

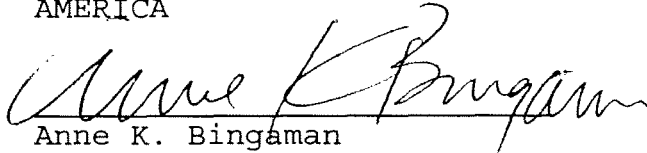
2. That Titan be ordered to pay to the United States an appropriate civil penalty as provided by section (g)(1) of the HSR Act, 15 U.S.C. § 18a(g)(1);

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

4. That Plaintiff be awarded its costs of this suit.

Dated: May 6, 1996

FOR THE PLAINTIFF UNITED STATES OF AMERICA



Anne K. Bingaman
Assistant Attorney General
Antitrust Division

U.S. Department of Justice
Antitrust Division
Washington, D.C. 20530

Eric H. Holder, Jr.
United States Attorney
D.C. Bar # 303115



Roberta Baruch
D.C. Bar # 269266
Special Attorney to the United
States Attorney General

Jane R. Seymour
Special Attorney to the United
States Attorney General

Kenneth A. Libby
Special Attorney to the United
States Attorney General

Bureau of Competition
Federal Trade Commission
601 Pennsylvania Ave, N.W.
Room 2115
(202) 326-2687

Counsel of Record:
Jane R. Seymour
Roberta Baruch
Kenneth A. Libby