

IN THE MATTER OF

T&N PLC

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-3312. Complaint, Nov. 8, 1990—Decision, Nov. 8, 1990

This consent order requires, among other things, a Manchester, England, manufacturer to divest within twelve months certain thinwall engine bearing assets and certain tri-metal heavywall engine bearing assets to a Commission-approved acquirer or acquirers; and if required by the acquirers, requires the respondent to supply certain input material to the acquirers for five years. If neither the respondent nor the trustee successfully divests either set of assets, the order requires the divestiture of J.P. Industries' McConnellsville, Ohio, facility, in addition to certain thinwall engine bearing assets.

Appearances

For the Commission: *Allee A. Ramadhan* and *Ernest A. Nagata*.

For the respondent: *Richard E. Carlton, Sullivan & Cromwell*, New York, N.Y.

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent T&N plc ("T&N"), a corporation subject to the jurisdiction of the Commission, proposes to acquire substantially all of the common stock of J.P. Industries, Inc. ("JPI") in violation of the provisions of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 11 of the Clayton Act, 15 U.S.C. 21, and Section 5(b) of the FTC Act, 15 U.S.C. 45(b), stating its charges as follows:

I. DEFINITIONS

1. For purposes of this complaint, the following definitions apply:

(A) "*T&N*" means T&N plc, its predecessors, subsidiaries, divisions, groups and affiliates controlled by T&N, and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(B) "*JPI*" means JP Industries, Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by JPI, and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(C) "*Plain engine bearings*" or "*bearings*" mean engine bearings characterized by having interfacing surfaces with relative motion of a sliding nature that provide support to a shaft rotating over a thin film of oil. Plain engine bearings include half bearings, bushings and thrust washers.

(D) "*Thinwall engine bearings*" means bearings with a wall thickness of one-quarter of an inch or less. Such bearings are utilized in automotive and light truck as well as heavy duty diesel engine applications.

(E) "*Tri-metal heavywall engine bearings*" means copper lead bearings with an overlay plating of lead tin or lead tin copper that have a wall thickness of greater than one-quarter of an inch.

II. THE RESPONDENT

2. Respondent T&N plc is a corporation organized under the laws of the United Kingdom, with its principal offices located at Bowdon House, Ashburton Road West, Trafford Park, Manchester M17 1RA, England.

3. T&N at all times relevant herein has been and is now engaged in commerce as the term "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affects commerce as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. 44.

III. THE ACQUISITION

4. On March 27, 1990, T&N and JPI entered into an agreement and plan of merger in which T&N agreed to purchase substantially all of JPI's common stock through T&N Automotive Components Inc., an indirect, wholly-owned subsidiary of T&N. The total value of the proposed acquisition is approximately \$190 million.

IV. RELEVANT MARKETS

5. For purposes of this complaint, the relevant lines of commerce

within which to assess the effects of T&N's proposed acquisition of JPI are the manufacture and sale of thinwall engine bearings and the design, manufacture and sale of tri-metal heavywall engine bearings.

6. For purposes of this complaint, the relevant geographic market within which to assess the effects of T&N's proposed acquisition of JPI is the United States.

V. MARKET STRUCTURE

7. The manufacture and sale of thinwall engine bearings in the United States is highly concentrated, whether measured by the Herfindahl-Hirschmann Index or by two-firm and four-firm concentration ratios.

8. The design, manufacture, and sale of tri-metal heavywall engine bearings in the United States is highly concentrated, whether measured by the Herfindahl-Hirschmann Index or by two-firm and four-firm concentration ratios.

VI. ENTRY CONDITIONS

9. Entry into the manufacture and sale of thinwall engine bearings in the United States is very difficult and time-consuming.

10. Entry into the design, manufacture, and sale of tri-metal heavywall engine bearings in the United States is very difficult and time-consuming.

VII. COMPETITION

11. T&N and JPI are actual competitors in the relevant markets.

VIII. EFFECTS

12. The effect of the acquisition may be substantially to lessen competition in the relevant markets described in paragraphs 5 and 6 in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the FTC Act, 15 U.S.C. 45, by, among other things:

(A) Eliminating substantial actual competition between T&N and JPI;

(B) Significantly enhancing the likelihood of successful anticompetitive interdependent conduct, nonrivalrous behavior, and actual or tacit collusion among firms in the relevant markets;

(C) Eliminating substantial potential competition between T&N and JPI; and

(D) Eliminating JPI as a substantial independent competitive force.

13. All of the above effects increase the likelihood that firms in the relevant markets will increase prices both in the near future and in the long term.

IX. VIOLATION CHARGES

14. The agreement and plan of merger violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and the acquisition, if consummated, would violate 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. Commissioner Azcuenaga dissenting.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of respondent's proposed acquisition of J.P. Industries, Inc., and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Clayton Act and the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law had been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission, having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, and makes the following jurisdictional findings and enters the following order:

1. Respondent T&N is a corporation organized, existing and doing business under and by virtue of the laws of the United Kingdom with

its principal executive offices at Bowdon House, Ashburton Road West, Trafford Park, Manchester M17 1RA, England.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That for the purposes of this order the following definitions shall apply:

1. "*T&N*" means T&N plc, a corporation organized, existing, and doing business under and by virtue of the laws of the United Kingdom with its principal offices at Bowdon House, Ashburton Road West, Trafford Park, Manchester M17 1RA, England, its predecessors, subsidiaries, divisions, groups and affiliates controlled by T&N (including, after the acquisition, JPI), and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

2. "*JPI*" means J.P. Industries, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan with its principal offices at 325 East Eisenhower Parkway, Ann Arbor, Michigan, its predecessors, subsidiaries, divisions, groups and affiliates controlled by JPI, and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

3. "*Plain engine bearings*" means engine bearings characterized by having interfacing surfaces with relative motion of a sliding nature that provide support to a shaft rotating over a thin film of oil. Plain engine bearings include half bearings, bushings and thrust washers.

4. "*Vandervell*" means Vandervell Limited, a corporation organized, existing, and doing business under and by virtue of the laws of the United Kingdom, which is a wholly-owned subsidiary of T&N engaged in the manufacture of plain engine bearings at a factory located in Maidenhead, England.

5. "*Vandervell America*" or "*VanAm*" means the business of selling plain engine bearings for U.S. gasoline and diesel applications into the U.S. aftermarket now carried on by Vandervell America, Inc. of Tucker, Georgia, a wholly-owned subsidiary of T&N.

6. "*AE Auto Parts*" means AE Auto Parts Limited, a corporation organized, existing, and doing business under and by virtue of the laws of the United Kingdom, which is a wholly-owned subsidiary of T&N engaged in the sale of a range of automotive and diesel truck components into the aftermarket from a facility located in Bradford, England.

7. "*Glacier*" means The Glacier Metal Co. Ltd., a corporation organized, existing, and doing business under and by virtue of the laws of the United Kingdom, which is a wholly-owned subsidiary of T&N engaged in the manufacture and sale of plain engine bearings.

8. "*Commission*" means the Federal Trade Commission.

9. "*Aftermarket*" means the sale of parts to replace used, worn or damaged parts in gasoline and diesel engines, excluding sales of bearings to original equipment manufacturers.

10. "*Thinwall engine bearing assets*" means the assets and information that T&N will divest relating to the manufacture and sale of thinwall engine bearings. Those assets consist of the following:

(a) All assets relating to the sale, marketing and distribution of bearings for U.S. gasoline engine applications manufactured by Vandervell directed to the U.S. aftermarket that are based at VanAm's facility in Tucker, Georgia, including, but not limited to, all customer lists, inventory (to be repackaged in plain boxes), and assignment of the building lease and all agreements with sales agencies and fee warehouses, excluding any trademarks or trade names;

(b) All tooling that is or has been located at Vandervell's factory in Maidenhead, England that is or has been used for the manufacture of bearings for U.S. gasoline applications (including, but not limited to, the 486 primary part numbers in current use and 76 primary part numbers that have been withdrawn from the U.S., all of which are listed in Appendix A) and/or, at the acquirer's option, all specifications relating to such tooling;

(c) Specifications for tooling used for the manufacture of bearings for U.S. diesel applications at Glacier's facility in Kilmarnock, Scotland that are sold and/or offered for sale in the U.S. aftermarket through VanAm, either directly or as agent for AE Auto Parts (the part numbers of which are listed in Appendix B);

(d) An agreement by T&N to manufacture and supply bearings in the quantities ordered for the applications described in subparagraphs I.10.(b) (excluding the 76 primary part numbers that have been

withdrawn from the U.S.) and I.10.(c) for a period of up to two (2) years (but in no event after Vandervell has transferred to the acquirer that tooling necessary to manufacture a given part number) at current transfer prices between AE Auto Parts Limited and VanAm plus freight and duty plus an annual increase equal to any increase in the United Kingdom Index of Producer Prices for the previous year;

(e) At the option of the acquirer, an agreement by T&N to supply, for a period of at least five (5) years, cast copper lead, sintered copper lead or aluminum strip (whichever the acquirer may choose to buy) used or to be used within the 5-year period by T&N to manufacture the bearings described in subparagraphs I.10.(b) and I.10.(c) for sale into the U.S. aftermarket, such strip to be used by the acquirer to manufacture bearings using the former Vandervell tooling or tooling made by or for the acquirer to the specifications described in subparagraphs I.10.(b) and I.10.(c), and such strip to be supplied by T&N at (i) the average price (excluding freight and duty) prevailing in other arm's-length sales of strip to third parties in the previous year plus an increase equal to any increase in the United States or United Kingdom Index of Producer Prices, whichever is applicable, since the end of that year, or (ii) a negotiated price not to exceed T&N's fully allocated cost of manufacturing strip plus 10%, whichever of the two is lower, plus freight and duty.

(f) Specifications for appropriate machining and overlay electroplating equipment to the extent such equipment is not already in the possession of the acquirer; and

(g) Manufacturing know-how (to the extent the acquirer does not already possess it) with respect to tooling, machining, electroplating and quality control necessary to make commercially saleable engine bearings for the part numbers identified in subparagraphs I.10.(b) and I.10.(c).

11. "*Tri-metal heavywall engine bearings*" means copper lead bearings with an overlay plating of lead tin or lead tin copper that have a wall thickness of greater than one-quarter of an inch.

12. "*Tri-metal heavywall engine bearing assets*" means the assets and information that T&N will divest relating to the manufacture and sale of tri-metal heavywall engine bearings. Those assets consist of the following:

(a) At the option of the acquirer, an agreement to supply for a period of at least five (5) years sintered copper lead slab for the manufacture by the acquirer of the tri-metal heavywall bearings

