IN THE MATTER OF

# FEDERAL-MOGUL CORPORATION, ET AL.

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-3836. Complaint, Dec. 4, 1998--Decision, Dec. 4, 1998*

This consent order requires, among other things, Federal-Mogul Corporation to divest T&N's thin-wall bearings business, Glacier Vandervell Bearings Group, to a Commission-approved buyer. The consent order allows Federal-Mogul to retain a royalty-free license to use the shared patents that were in use for former T&N products other than thin-wall bearings.

*Participants*

For the Commission: *Philip Eisenstat, Wallace Easterling, Joseph Krauss, William Baer, Oliver Grawe,* and *Jonathan Baker.*

For the respondents: *Mark Leddy, Cleary, Gottlieb, Steen & Hamilton*, Washington, D.C. and *Deborah Feinstein, Arnold & Porter*, Washington, D.C.

## COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent Federal-Mogul Corporation ("Federal-Mogul"), a corporation subject to the jurisdiction of the Commission, has made a cash tender offer to acquire all of the common stock of T&N plc ("T&N"), an entity subject to the jurisdiction of the Commission, 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, stating its charges as follows:

### I. THE RESPONDENTS

1. Respondent Federal-Mogul Corporation ("Federal-Mogul") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 26555 Northwestern Highway, Southfield, Michigan. In 1996, Federal-Mogul had worldwide net sales of approximately $2 billion.

2. Respondent T&N plc ("T&N") is a corporation organized under the laws of the United Kingdom, with its principal offices located at Manchester International Office Center, Styal Road, Manchester M22 5TN, England. In 1995, T&N had worldwide revenue of approximately $3.2 billion, including sales in the United States totaling approximately $877 million.

## II. JURISDICTION

3. At all times relevant here, respondents have been, and are now, corporations as "corporation" is defined in Section 4 of the FTC Act, 15 U.S.C. 44; and at all times relevant herein, the respondents have been, and are now, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and in Section 4 of the FTC Act, 15 U.S.C. 44.

## III. THE PROPOSED ACQUISITION

4. On or about October 16, 1997, Federal-Mogul notified T&N of Federal-Mogul's intention to commence a cash tender offer to acquire 100 percent of the voting securities of T&N plc (the "Acquisition"), for approximately $2.4 billion.

## IV. THE RELEVANT MARKETS

### *A. Relevant Product Markets*

5. The development, manufacture and sale of fluid film or "plain" thinwall bearings ("thinwall bearings") is one relevant line of commerce within which to analyze the competitive effects of the proposed acquisition. Thinwall bearings have a wall thickness of approximately three-eighths of an inch or less, and include half bearings, bushings and thrust washers. Thinwall bearings are a type of bearing used in automobile, truck and heavy equipment engines and other vehicle applications and in certain industrial applications. The surface of thinwall bearings is coated with a film of oil and the thinwall bearings are used to separate two materials to prevent friction and the resulting heat from damaging or destroying parts. There are no economic substitutes for thinwall bearings. Both Federal-Mogul and T&N develop, manufacture and sell thinwall bearings.

6. The development, manufacture and sale of thinwall bearings for use in automobile and light truck engines ("light duty engine

bearings") and which are sold to original equipment manufacturers ("OEMs") for use in the manufacture of engines is another relevant line of commerce within which to analyze the competitive effects of the proposed acquisition. Not all thinwall bearings can be used as light duty engine bearings. Each automobile and light truck engine must have light duty engine bearings that are specifically designed and engineered for that engine. There are no economic substitutes for light duty bearings sold to OEMs. Both Federal-Mogul and T&N develop, manufacture and sell light duty engine bearings.

7. The development, manufacture and sale of thinwall bearings for use in heavy truck engines and heavy equipment engines ("heavy duty engine bearings") and which are sold to OEMs for use in the manufacture of engines is another relevant line of commerce within which to analyze the competitive effects of the proposed acquisition. Not all thinwall bearings can be used as heavy duty engine bearings. Each heavy truck and heavy equipment engine must have heavy duty engine bearings that are specifically designed and engineered for that engine. There are no economic substitutes for heavy duty bearings sold to OEMs. Both Federal-Mogul and T&N develop, manufacture and sell heavy duty engine bearings.

8. The manufacture and sale of light duty engine bearings and heavy duty engine bearings which are sold to the automotive and truck aftermarket ("aftermarket bearings") is another relevant line of commerce within which to analyze the competitive effects of the proposed acquisition. The automotive and truck aftermarket is the industry that services or repairs automobiles and trucks after the vehicles are no longer covered by the OEM warranty. Each engine that is serviced in the aftermarket and that requires new bearings must have bearings that are specifically designed to fit in that engine. There are no economic substitutes for light duty and heavy duty bearings sold to the aftermarket. Both Federal-Mogul and T&N manufacture and sell aftermarket bearings.

### *B. Relevant Geographic Market*

9. The relevant geographic area in which to analyze the effects of the Acquisition in the relevant lines of commerce is the world.

10. With few exceptions, each automobile and truck engine has a unique set of bearings that are designed only to be used in that engine and cannot be used in any other engine.

11. Different consumer preferences for engines, based on such things as different fuel costs, different fuel preferences, different pollution regulations, and different road conditions, all lead engine builders to build different engines in different parts of the world. The engines built to reflect differences in consumer demand have different requirements in terms of the properties they must have. These differences in the properties of engines mean that the engine bearings used in these engines must also have different properties. Customers who purchase bearings, including engine manufacturers, as well as aftermarket service businesses, can and do purchase thinwall bearings from producers located throughout the world so long as the producers can develop and manufacture thinwall bearings that will meet the particular requirements of engines in a given customer's part of the world.

12. Engine manufacturers in the United States have particular performance and engineering requirements for their engine bearings that differ from the requirements facing engine manufacturers in other parts of the world. Engine manufacturers in the United States can and do purchase thinwall bearings from bearing producers located throughout the world that can develop and manufacture bearings that meet the needs of engine manufacturers in the United States.

## V. MARKET STRUCTURE

13. While customers for thinwall bearings can turn anywhere in the world, the thinwall bearings that they buy must be engineered to the particular applications of the customers. The best measure of a thinwall bearings producer's ability to meet the applications requirements of customers in the United States and compete for sales to customers in the United States, is the bearings producer's current sales to customers in the United States. As measured by current sales to customers in the United States, the relevant markets are highly concentrated, whether measured by the Herfindahl-Hirschman Index (or "HHI") or by two-firm or four-firm concentration ratios. The proposed merger, if consummated, would significantly increase the HHIs in already highly concentrated markets.

14. In the sale of thinwall bearings to customers in the United States, respondent Federal-Mogul is the largest competitor with about a 49 percent market share, and T&N is the second largest with about a 34 percent market share. Together, Federal-Mogul and T&N would

control approximately 83 percent of all United States thinwall bearing sales. The proposed merger would increase the HHI by over 3300 points and produce an industry concentration of over 7000 points.

15. In the sale of light duty engine bearings to OEMs located in the United States, respondent Federal-Mogul is the largest competitor with about a 53 percent market share, and T&N is the second largest with about a 28 percent market share. Together, Federal-Mogul and T&N would control approximately 81 percent of all United States sales of light duty engine bearing sales to OEMs. The proposed merger would increase the HHI by over 3000 points and produce an industry concentration of over 7000 points.

16. In the sale of heavy duty engine bearings to OEMs located in the United States, respondent Federal-Mogul is the largest competitor with about a 62 percent market share, and T&N is the second largest with about a 22 percent market. Together, Federal-Mogul and T&N would control approximately 84 percent of all United States sales of heavy duty engine bearings to OEMs. The proposed merger would increase the HHI by over 2800 points and produce an industry concentration of over 7200 points.

17. In the sale of aftermarket bearings to aftermarket customers in the United States, respondent Federal-Mogul is the largest competitor with about a 58 percent market share, and T&N is the second largest with about a 21 percent market share. Together, Federal-Mogul and T&N would control approximately 79 percent of all United States sales of aftermarket bearings. The proposed merger would increase the HHI by over 2500 points and produce an industry concentration of over 6500 points.

## VI. ENTRY CONDITIONS

18. Entry into the thinwall bearings market requires more than two years. Entry into the OEM market would not assure entry into the aftermarket, and entry into the aftermarket would not assure entry into the OEM market. The markets have different entry impediments as to product design, qualification and testing, production and brand name recognition. Entry into the thinwall bearing market is difficult and would not be timely to prevent anticompetitive effects in the relevant markets.

19. Entry into the development, manufacture, and sale to OEMs in the United States of light duty engine bearings requires substantially more than two years. Entry into competition for sales of

light duty engine bearings requires the development of materials from which to make the bearing, the development of exacting manufacturing processes and capabilities, the design of bearings for a particular engine, and the completion of extensive customer qualification and testing. Because the materials used to make the bearings are different, as are the manufacturing processes and the technical requirements of the bearings, the ability to compete in the sale of heavy duty engine bearings does not give a producer the ability to compete in the sale of light duty engine bearings. Entry into the sale of light duty engine bearings to OEMs would not be timely to prevent anticompetitive effects in the market for light duty engine bearings sold to OEM customers in the United States.

20. Entry into the development, manufacture, and sale to OEMs in the United States of heavy duty engine bearings requires substantially more than two years. Entry into competition for sales of heavy duty engine bearings requires the development of materials from which to make the bearing, the development of exacting manufacturing processes and capabilities, the design of bearings for a particular engine, and the completion of extensive customer qualification and testing. Because the materials used to make the bearings are different, as are the manufacturing processes and the technical requirements of the bearings, the ability to compete in the sale of light duty engine bearings does not give a producer the ability to compete in the sale of heavy duty engine bearings. Entry into the sale of heavy duty engine bearings to OEMs would not be timely to prevent anticompetitive effects in the market for heavy duty engine bearings sold to OEM customers in the United States.

21. Entry into the market for aftermarket bearings for customers in the United States, requires more than two years, and in order to match the broad product line of Federal-Mogul or T&N, a new entrant would be at a significant cost disadvantage to the incumbent firms. Successful competition in the sale of aftermarket bearings requires an extensive line of bearings that will fit not only engines in current production, but most of the engines that have been production over the past 30 to 40 years. Each aftermarket bearing requires tooling unique to it. The existing producers of aftermarket bearings for customers in the United States, including Federal-Mogul and T&N, have such extensive product offerings, exceeding 6,000 or 7,000 part numbers. To offer this extensive a line of bearings requires the design