

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

UNITED STATES OF AMERICA)
United States Department of Justice)
Antitrust Division)
450 Fifth Street, N.W., Suite 8700)
Washington, D.C. 20530)
)
Plaintiff)
)
v.)
)
REGAL BELOIT CORPORATION)
200 State Street)
Beloit, Wisconsin 53511)
)
and)
)
A.O. SMITH CORPORATION)
11270 West Park Place, Suite 170)
Milwaukee, Wisconsin 53224)
)
Defendants)

FILED

AUG 17 2011

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

Case: 1:11-cv-01487
Assigned To : Huvelle, Ellen S.
Assign. Date : 8/17/2011
Description: Antitrust

COMPLAINT

The United States of America (“United States”), acting under the direction of the Attorney General of the United States, brings this civil antitrust action against Defendants Regal Beloit Corporation (“RBC”) and A.O. Smith Corporation (“AOS”) to enjoin RBC’s proposed acquisition of the electric motor business from AOS. The United States complains and alleges as follows:

I. NATURE OF THE ACTION

1. On December 12, 2010, RBC entered into an agreement to acquire the electric motor business from AOS. This business involves the manufacture and sale of numerous types of motors, among other related products. The transaction is valued at approximately \$875

million and includes \$700 million in cash and 2.83 million shares of RBC common stock, currently valued at approximately \$175 million.

2. RBC's proposed acquisition of the electric motor business from AOS likely would substantially lessen competition in the markets for electric motors for pool pumps and electric motors for spa pumps in the United States. RBC and AOS are two of the three leading suppliers of these products in the United States. Combined, RBC and AOS would supply approximately 85 percent of the U.S. market for electric motors for pool pumps. In addition, combined, RBC and AOS would supply well over half of the U.S. market for electric motors for spa pumps. For some customers of electric motors for pool pumps and electric motors for spa pumps, AOS and RBC are the two best sources of supply.

3. In addition, RBC's proposed acquisition of the electric motor business from AOS would eliminate the actual potential competition from AOS in the market for draft inducers used in high-efficiency furnaces in the United States. RBC is currently the only supplier of these draft inducers in the United States. AOS has the means and is likely to enter this market. AOS also is a uniquely well-positioned entrant. It is likely that AOS's entry into this market would produce procompetitive effects.

4. The elimination of the competition between RBC and AOS likely would result in RBC's ability profitably to unilaterally raise prices of electric motors for pool pumps and electric motors for spa pumps to customers in the United States. The proposed acquisition also likely would reduce RBC's incentive to invest in innovations for these products.

5. Further, the elimination of AOS as a potential competitor of draft inducers for high-efficiency furnaces in the United States likely would result in RBC's ability to continue its monopoly without the threat of a potential entrant.

6. As a result, the proposed acquisition likely would substantially lessen competition in the development, manufacture, and sale of electric motors for pool pumps and electric motors for spa pumps in the United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The acquisition also would eliminate the potential competition between RBC and AOS for draft inducers for high-efficiency furnaces in the United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

II. THE DEFENDANTS

7. RBC is incorporated in Wisconsin and has its headquarters in Beloit, Wisconsin. RBC is a manufacturer of mechanical and electrical motion control and power generation products. In 2010, RBC had revenues of approximately \$2.2 billion, primarily from its electric products.

8. AOS is incorporated in Delaware and has its headquarters in Milwaukee, Wisconsin. AOS comprises two operating units: the water products business and the electric motor business. AOS is one of North America's largest manufacturers of electric motors for residential and commercial applications. In 2010, AOS had revenues of approximately \$1.5 billion, with approximately \$700 million of that amount from electric motors and related products.

III. JURISDICTION AND VENUE

9. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. §§ 4 and 25, as amended, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

10. Defendants develop, manufacture, and sell electric motors for pool pumps and electric motors for spa pumps and other products in the flow of interstate commerce.

Defendants' activities in the development, manufacture, and sale of these products substantially affect interstate commerce. This Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

11. Defendants have consented to venue and personal jurisdiction in this judicial district. Venue is therefore proper in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(c).

IV. ELECTRIC MOTORS FOR POOL PUMPS AND SPA PUMPS

A. Background

12. Electric motors come in a broad range of sizes, horsepower ratings, and end-use segments. Standard frame sizes are determined by both common practice and the National Electrical Mechanical Association. While there is a great deal of overlap between motor size and horsepower, in general, as size increases, horsepower does as well.

13. The smallest electric motors, which generally range in horsepower from 1/400 to one-half, are called subfractional motors. Slightly larger electric motors, which generally range in horsepower from one-half horsepower to five horsepower, are called fractional motors. In addition to variations in frame and horsepower sizes, electric motors are often customized for specific end-use applications. End-use categories include water pumps, with specific applications for pumping well water and wastewater, as well as for use in pools and spas; heating, ventilation, air conditioning, and refrigeration, with specific applications in air conditioning compressors, fans, furnaces, and blowers; and general commercial uses, with such diverse applications as garage door openers and exercise machines.

14. For a number of years, manufacturers have been developing more efficient electric motors. One of the most innovative technologies being utilized and continually improved for higher energy efficiency is variable speed technology, which enables the motor to switch between several speeds, sometimes using integrated electronics and permanent magnet technology, thereby allowing the motor to run more efficiently.

15. Motors sold for use in pool pumps and spa pumps must be uniquely engineered and assembled to meet the size and performance specifications of the individual pump. In addition to size and energy efficiency, specification variables include the capacity of the impeller, the speed, the current/voltage, whether the motor is operated continually or sporadically, and whether the pump has more than one speed of operation.

16. In light of government regulations, energy costs, and environmental concerns, more energy-efficient motors, including variable speed motors, are increasingly demanded for pool and spa applications. For example, California recently enacted legislation pertaining to the energy efficiency of pool pumps and spa pumps. Even without such legislation, energy-efficient motors are becoming more popular because they use less electricity and, therefore, are less costly to operate. Energy-efficient pump motors also produce less noise than standard induction pump motors. Pool pumps are an excellent application for the innovative, more energy-efficient motors because pool pumps typically run for many hours a day, sometimes even continuously. Pool pumps are therefore expected to be a high growth area for more energy-efficient electric motors.

17. All electric motors must pass Underwriters Laboratories (“UL”) certification. UL has established safety standards specifically for all electric motors for pool pumps and all electric motors for spa pumps. For example, electric motors for pool pumps and electric motors for spa

pumps are the only pump motors that are required to have a ground bonding lug on the outside of the pump, assuring that the pump is electrically grounded.

18. Electric motors for pool pumps and electric motors for spa pumps are purchased by manufacturers of pool pumps and spa pumps. Electric motors for pool pumps and electric motors for spa pumps are also sold as replacements or upgrades in the aftermarket through the pump manufacturers and distributors.

B. Relevant Markets

1. Electric Motors for Pool Pumps

a. Product Market

19. Electric motors for pool pumps have specific applications, for which other types of pumps cannot be employed. Motors for use in other types of pumps, such as sump pumps and spa pumps, cannot be used in pool pumps because each pump is specifically designed for a particular application and the motor is then specifically designed for each pump type. The motors for the different types of pumps also have different performance characteristics. A customer who requires a motor for a pool pump cannot substitute a motor for a spa pump, sump pump, or jetted tub pump, or any other kind of motor.

20. A small but significant increase in the price of electric motors for pool pumps would not cause customers of those motors to substitute a different kind of motor or other product or reduce purchases of electric motors for pool pumps in volumes sufficient to make such a price increase unprofitable. Accordingly, the development, manufacture, and sale of electric motors for pool pumps is a line of commerce and relevant market within the meaning of Section 7 of the Clayton Act.

b. Geographic Market

21. Although electric motors for pool pumps may be manufactured outside the United States, U.S. purchasers can use only those motors designed for use in the United States. These motors must be customized for the demands of U.S. purchasers and must comply with distinct U.S. technical specifications, such as UL certification.

22. Manufacturers of electric motors for pool pumps typically deliver the motors to their customers' locations. Most customers that purchase motors for pool pumps for use in the United States are located in the United States.

23. Major U.S. customers of electric motors for pool pumps consider only those manufacturers with a substantial U.S. presence, including sales, technical, and support personnel. U.S. customers prefer localized experience, inventory, technical support, and warranty assistance, as well as detailed knowledge of the U.S. market and products designed to meet U.S. requirements.

24. A small but significant increase in the price of electric motors for pool pumps intended for use in the United States would not cause a sufficient number of U.S. customers to turn to manufacturers of those motors that do not have a substantial presence in the United States so as to make such a price increase unprofitable. Accordingly, the United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

2. Electric Motors for Spa Pumps

a. Product Market

25. Electric motors for spa pumps have specific applications, for which other types of pumps cannot be employed. Motors for use in other types of pumps, such as sump pumps and pool pumps, cannot be used in spa pumps because each pump is specifically designed for a

particular application and the motor is then specifically designed for each pump type. The motors for the different types of pumps also have different performance characteristics. A customer who requires a motor for a spa pump cannot substitute a motor for a pool pump, sump pump, or jetted tub pump, or any other kind of motor.

26. A small but significant increase in the price of electric motors for spa pumps would not cause customers of those motors to substitute a different kind of motor or other product or reduce purchases of electric motors for spa pumps in volumes sufficient to make such a price increase unprofitable. Accordingly, the development, manufacture, and sale of electric motors for spa pumps is a line of commerce and relevant market within the meaning of Section 7 of the Clayton Act.

b. Geographic Market

27. Electric motors for spa pumps may be manufactured outside the United States; however, these motors must be customized for use in the United States and must comply with distinct U.S. technical specifications, such as UL certification.

28. Manufacturers of electric motors for spa pumps typically deliver the motors to their customers' locations. Most customers that purchase motors for spa pumps for use in the United States are located in the United States.

29. Most U.S. customers of electric motors for spa pumps prefer manufacturers with a substantial U.S. presence, including sales, technical, and support personnel. U.S. customers prefer localized experience, inventory, technical support, and warranty assistance, as well as detailed knowledge of the U.S. market and products designed to meet U.S. requirements.

30. A small but significant increase in the price of electric motors for spa pumps intended for use in the United States would not cause a sufficient number of U.S. customers to

turn to manufacturers of these motors that do not have a substantial presence in the United States so as to make such a price increase unprofitable. Accordingly, the United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Anticompetitive Effects of the Proposed Acquisition

1. Electric Motors for Pool Pumps

31. AOS, RBC, and one other company are the only significant competitors that sell electric motors for pool pumps in the United States. Currently, AOS and RBC sell approximately 76 and nine percent, respectively, of electric motors for pool pumps in the United States. The third competitor accounts for most of the remaining sales in this market.

32. RBC's proposed acquisition of the electric motor business from AOS likely would substantially lessen competition in the U.S. market for electric motors for pool pumps. If the acquisition is not enjoined, the combined firm would supply approximately 85 percent of the electric motors for pool pumps in the United States. The Herfindahl-Hirschman Index ("HHI") (explained in Appendix A) is a measure of market concentration. Mergers resulting in highly concentrated markets (with an HHI in excess of 2,500) that cause an increase in the HHI of more than 200 points are presumed to be likely to enhance market power under the *Horizontal Merger Guidelines* issued by the U.S. Department of Justice and the Federal Trade Commission. Following RBC's acquisition of the electric motor business of AOS, the HHI would increase from approximately 6,000 points to more than 7,500 points.

33. AOS's and RBC's bidding behavior often has been constrained by the possibility of losing sales of electric motors for pool pumps to the other. For many customers of electric motors for pool pumps, AOS and RBC are the two best sources.

34. Customers have benefited from the competition between AOS and RBC for sales of electric motors for pool pumps by receiving lower prices. In addition, AOS and RBC have competed vigorously by providing innovations that have resulted in higher-quality and more energy-efficient motors. For example, AOS and RBC have competed for the development and sale of more energy-efficient motors for pool pumps. The third competitor is behind AOS and RBC in developing this energy-efficient technology. Further, AOS and RBC compete based on the level of service they provide to their customers. The combination of AOS and RBC would eliminate this competition and its future benefits to customers. Post-acquisition, RBC likely would have the incentive and gain the ability to profitably increase prices, reduce quality, reduce innovation, and provide less customer service.

35. The response of the only other significant competitor in the United States for electric motors for pool pumps would not be sufficient to constrain a unilateral exercise of market power by RBC post-acquisition. RBC would be aware that many customers strongly prefer it as a supplier, allowing it profitably to raise prices above pre-acquisition levels.

36. The proposed acquisition, therefore, likely would substantially lessen competition in the United States for the development, manufacture, and sale of electric motors for pool pumps. This likely would lead to higher prices, lower quality, less customer service, and less innovation in violation of Section 7 of the Clayton Act.

2. Electric Motors for Spa Pumps

37. AOS, RBC, and one other company are the only significant competitors that sell electric motors for spa pumps in the United States. Currently, AOS and RBC each sell a substantial portion of the electric motors for spa pumps in the United States. The third competitor accounts for most of the remaining sales in this market.

38. RBC's proposed acquisition of the electric motor business from AOS likely would substantially lessen competition in the U.S. market for electric motors for spa pumps. If the acquisition is not enjoined, the combined firm would supply well over half of the electric motors for spa pumps in the United States.

39. AOS's and RBC's bidding behavior often has been constrained by the possibility of losing sales of electric motors for spa pumps to the other. For many customers of motors for spa pumps, AOS and RBC are the two best sources.

40. Customers have benefited from the competition between AOS and RBC for sales of electric motors for spa pumps by receiving lower prices. In addition, AOS and RBC have competed vigorously by providing innovations that have resulted in higher-quality motors. The combination of AOS and RBC would eliminate this competition and its future benefits to customers. Post-acquisition, RBC likely would have the incentive and gain the ability to profitably increase prices, reduce quality, reduce innovation, and provide less customer service.

41. The response of the only other significant competitor in the United States for electric motors for spa pumps would not be sufficient to constrain a unilateral exercise of market power by RBC post-acquisition. RBC would be aware that many customers strongly prefer it as a supplier, allowing it profitably to raise prices above pre-acquisition levels.

42. The proposed acquisition, therefore, likely would substantially lessen competition in the United States for the development, manufacture, and sale of electric motors for spa pumps. This likely would lead to higher prices, lower quality, less customer service, and less innovation in violation of Section 7 of the Clayton Act.

D. Difficulty of Entry

43. Sufficient, timely entry of additional competitors into the markets for electric motors for pool pumps and electric motors for spa pumps in the United States is unlikely. Therefore, entry or the threat of entry into this market will not prevent the harm to competition caused by the elimination of AOS as a supplier of these products.

44. Firms attempting to enter into the U.S. market for the development, manufacture, and sale of electric motors for pool pumps and electric motors for spa pumps face several barriers to entry. First, establishing a reputation for successful performance and gaining customer confidence are important and may require many years and substantial sunk costs. Because end users rely on these motors to perform a critical function in their pool pumps and spa pumps, they are reluctant to purchase a product from a supplier not already known for its expertise in electric motors for pool pumps and electric motors for spa pumps, or at least in fractional electric motors.

45. Second, entry into the markets for electric motors for pool pumps and electric motors for spa pumps could take years. A new supplier must demonstrate to potential customers that its motors can meet the customers' particular design specifications as well as their rigorous quality and performance standards. Because each customer may have many different specifications for the motors, the period for qualification can take up to twelve months with no guarantee of success. This period does not include the time necessary to obtain UL certification, which may take up to six months. Further, because customer specifications are unique, qualification with one customer does not guarantee qualification with another.

46. Third, the technology and expertise involved in developing and producing electric motors for pool pumps and electric motors for spa pumps is another barrier to entry. A new

supplier would need to construct production lines capable of manufacturing motors for pool pumps and motors for spa pumps that meet the standards of potential customers. In addition, the technical know-how necessary to design and successfully manufacture such motors is difficult to obtain. Even incumbent manufacturers of fractional electric motors, with all their expertise and technical know-how, require substantial time and expense for engineering, tooling, and testing a new motor before it can be sold. A new entrant must also be committed to investing in research and development to meet the customers' ongoing desire for innovation, including more energy-efficient motors.

47. Finally, U.S. customers prefer suppliers that have a substantial U.S. presence, which can require a significant investment in time and money. Given the low volumes of motors needed by manufacturers of pool pumps and spa pumps, new entrants are unlikely to invest in establishing the personnel, inventory, and distribution presence required to compete effectively in the United States.

48. As a result of these barriers, entry into the markets for electric motors for pool pumps and electric motors for spa pumps in the United States would not be timely, likely, or sufficient to defeat the substantial lessening of competition that likely would result from RBC's acquisition of AOS's electric motor business.

V. DRAFT INDUCERS FOR HIGH-EFFICIENCY FURNACES

A. Background

49. Gas-fired furnaces require the movement of air and the expulsion of hot combustion gases. Blowers move the air through ducts and circulate it around a building. Furnace draft inducers are specialized blowers, which perform an important safety function by

extracting harmful combustion gases such as carbon monoxide, and venting those gases outside. Furnace draft inducers must meet federal regulatory standards for safety and energy efficiency.

50. Furnace draft inducers consist of a housing containing a blower wheel and a motor. Furnace draft inducers are distinguished from circulation blowers by the shape of the housing, the need for safety devices to ensure gas is extracted, and the design of the motor mounting on the blower assembly, among other design features. The shapes of the housing and fan blades are among the more difficult design aspects of furnace draft inducers.

51. Furnaces are classified according to their thermal efficiency, which is the percentage of energy that is used to heat the air and that is not lost with the vented combustion gases. Draft inducers are designed for the specific thermal efficiency of each furnace. Less efficient furnaces, typically referred to as 80 percent thermal efficiency or 80+, use draft inducers that employ an older technology that has been utilized for forty years. More modern furnaces with higher thermal efficiency, typically referred to as 90 percent thermal efficiency or 90+, use draft inducers based on newer, more advanced technology.

52. Draft inducers for furnaces with 80 percent thermal efficiency (hereafter referred to as “80+ draft inducers”) are used in non-condensing furnaces. Non-condensing furnaces do not need the draft inducer to drain condensation. 80+ draft inducers are generally simpler and easier to design than draft inducers for furnaces with a 90 percent or greater thermal efficiency (hereafter referred to as “90+ draft inducers”) because they have a single inlet, a sheet metal housing that is easily available, and a narrow, forward-curved wheel.

53. 90+ draft inducers are used in condensing furnaces. Condensing furnaces take so much heat out of the combusted gases (that is, turn so much of the combustion energy into heat that is circulated) that condensation forms in the draft inducer. This necessitates a draft inducer

with a plastic housing that is made from polycarbonate material, rather than metal, which can corrode, and a drain for the condensation. 90+ draft inducers also contain a more technically complicated “swirl fan” and backward-curved wheel, which is inclined for greater efficiency and noise reduction. 90+ draft inducers are priced significantly higher than 80+ draft inducers.

54. Currently, sales of 90+ draft inducers represent the majority of the draft inducer sales in the United States. Usage of 90+ draft inducers is likely to increase as federal regulations requiring the use of more energy-efficient products likely will lead to the removal of furnaces with 80 percent thermal efficiency from the market.

B. Relevant Markets

1. Product Market

55. 90+ draft inducers have specific applications, for which other products cannot be employed. Every furnace needs a draft inducer, and no product other than a draft inducer can extract the harmful combustion gases from the furnace and safely vent them. In addition, 80+ draft inducers, or other draft inducers designed for less efficient furnaces, cannot be substituted for a 90+ draft inducer. Draft inducers for less efficient furnaces will not work with a furnace with 90 percent thermal efficiency.

56. Draft inducers are also used to vent hazardous gases created in other gas appliances. Although performing a similar function as furnace draft inducers, the frame shape, wheel design, motor, and other design features of a draft inducer intended for another appliance are sufficiently distinct that they cannot be used in a furnace.

57. A small but significant increase in the price of 90+ draft inducers would not cause customers of 90+ draft inducers to substitute a lower-efficiency draft inducer, such as an 80+ draft inducer, or another product or to reduce purchases of 90+ draft inducers in volumes

sufficient to make such a price increase unprofitable. Accordingly, the development, manufacture, and sale of 90+ draft inducers is a line of commerce and relevant market within the meaning of Section 7 of the Clayton Act.

2. Geographic Market

58. 90+ draft inducers sold in the United States must be customized for the demands of U.S. purchasers and must comply with distinct U.S. technical specifications and certification requirements.

59. Manufacturers of 90+ draft inducers typically deliver the products to their customers' locations. 90+ draft inducers are used only in the United States and Canada. Customers that purchase 90+ draft inducers for use in the United States are located in the United States.

60. Major U.S. customers of 90+ draft inducers consider only those manufacturers with a significant understanding of heating systems in the United States. Those manufacturers all have a substantial presence in the United States, including sales, technical, and support personnel. U.S. customers also prefer localized experience, inventory, and technical support, as well as detailed knowledge of the U.S. market.

61. A small but significant increase in the price of 90+ draft inducers would not cause a sufficient number of customers in the United States to turn to manufacturers of 90+ draft inducers without a presence in the United States so as to make such a price increase unprofitable. Accordingly, the United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Anticompetitive Effects of the Proposed Acquisition

62. For the past several years, RBC has been the only firm selling 90+ draft inducers in the United States. Furnace manufacturers have attempted to find alternative sources for 90+ draft inducers. For at least one year, AOS has been attempting to enter the U.S. market for 90+ draft inducers. AOS has the means to enter this market and has advantages over other manufacturers that make it a particularly strong and likely entrant.

63. While AOS is not currently manufacturing and selling 90+ draft inducers, it is one of the few manufacturers in the United States that likely would have the ability to enter the 90+ draft inducer market. RBC and AOS are the only manufacturers of water heater draft inducers in the United States. While water heater draft inducers are distinct from 90+ draft inducers, AOS's technology, experience, and know-how relating to the development of water heater draft inducers provided AOS with some technical knowledge necessary to begin developing a 90+ draft inducer that would not infringe numerous RBC patents relating to the 90+ draft inducer. Until the announcement of RBC's proposed acquisition of the electric motor business of AOS, AOS engaged in 90+ draft inducer development projects with three furnace manufacturers and had sent samples of its product to one of these manufacturers. These furnace manufacturers viewed AOS as presenting the only opportunity to develop an alternative to RBC for 90+ draft inducers. Accordingly, AOS was the firm best positioned to challenge RBC's dominance in the 90+ draft inducer market in the United States.

64. One company that sells 80+ draft inducers to U.S. customers is attempting to develop a 90+ draft inducer. However, its efforts have been unsuccessful and most furnace manufacturers do not consider this company to be close to success in developing a 90+ draft inducer.

65. AOS's entry into the U.S. market for 90+ draft inducers likely would have benefited customers with lower prices, more innovation, and more favorable terms of service. AOS may have become an alternative to RBC for the supply of 90+ draft inducers. RBC's acquisition of the electric motor business of AOS would prevent AOS's entry and, therefore, substantially lessen competition in the market for 90+ draft inducers, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

D. Difficulty of Entry

66. Sufficient, timely entry of additional competitors into the market for 90+ draft inducers in the United States is unlikely. Therefore, entry or the threat of entry into this market is not likely to prevent the harm to competition caused by the elimination of AOS as a potential supplier of 90+ draft inducers.

67. Firms attempting to enter the U.S. market for the development, manufacture, and sale of 90+ draft inducers face several barriers to entry. First, a new supplier of 90+ draft inducers must be certified as a supplier by the furnace manufacturer and must work with that manufacturer to customize the draft inducer specifically for the manufacturer's furnace. This is a rigorous and lengthy process, often involving many redesigns of the product, and can take two years or longer. This process involves, among other things, reaching an agreement by the furnace manufacturer and the draft inducer supplier on the specifications for the draft inducer, the design of the draft inducer and each subcomponent to meet these specifications, and the laboratory and field testing of the subcomponents and the assembled 90+ draft inducer.

68. Second, draft inducer suppliers must have an established reputation for the reliability of their products and the capacity to timely supply them in sufficient quantities. Because draft inducers perform a critical function in the furnace, furnace manufacturers are

reluctant to purchase a product from a supplier that is not already known for its expertise in the product area.

69. Third, a firm attempting to develop a 90+ draft inducer must have the technology and know-how to design a draft inducer that avoids infringing on the numerous RBC patents relating to 90+ draft inducers. Those few motor or blower manufacturers in the heating industry that have reputations for quality products and the capacity to supply motors, blowers, and other heating system components have experienced difficulties in their attempts to develop a 90+ draft inducer that would be competitive in price, quality, and the capacity to supply them.

70. As a result of these barriers, entry into the market for 90+ draft inducers in the United States would not be timely, likely, or sufficient to defeat the substantial lessening of competition that would result from RBC's acquisition of AOS's electric motor business.

VI. VIOLATIONS ALLEGED

71. RBC's proposed acquisition of the electric motor business from AOS likely would substantially lessen competition in the development, manufacture, and sale of electric motors for pool pumps, electric motors for spa pumps, and 90+ draft inducers in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

72. Unless enjoined, the proposed acquisition likely would have the following anticompetitive effects, among others:

(a) actual and potential competition between RBC and AOS in the markets for the development, manufacture, and sale of electric motors for pool pumps and electric motors for spa pumps in the United States would be eliminated;

(b) competition in the markets for the development, manufacture, and sale of electric motors for pool pumps and electric motors for spa pumps in the United States likely would be substantially lessened;

(c) for electric motors for pool pumps and electric motors for spa pumps in the United States, prices likely would increase and quality, customer service, and innovation likely would decrease;

(d) potential competition between RBC and AOS in the market for 90+ draft inducers in the United States would be eliminated; and

(e) prices for 90+ draft inducers in the United States likely would remain higher than they would be in a market with more than one competitor.

VII. REQUESTED RELIEF

73. The United States requests that this Court:

(a) adjudge and decree that RBC's acquisition of the electric motor business from AOS would be unlawful and violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

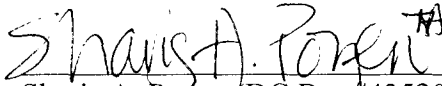
(b) preliminarily and permanently enjoin and restrain Defendants and all persons acting on their behalf from consummating the proposed acquisition of the AOS electric motor business by RBC, or from entering into or carrying out any other contract, agreement, plan, or understanding, the effect of which would be to combine RBC with the electric motor business of AOS;


(c) award the United States its costs for this action; and

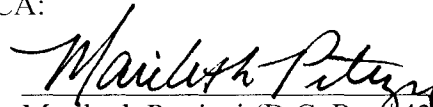
(d) award the United States such other and further relief as the Court deems

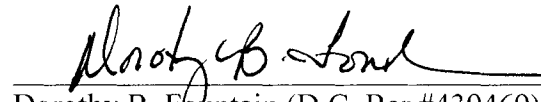
just and proper.

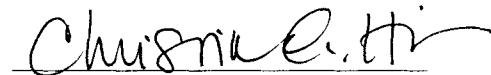
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APPENDIX A DEFINITION OF HHI

The term “HHI” means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI 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 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1,500 and 2,500 points are considered to be moderately concentrated and markets in which the HHI is in excess of 2,500 points are considered to be highly concentrated. *See Horizontal Merger Guidelines* § 5.3 (issued by the U.S. Department of Justice and the Federal Trade Commission on Aug. 19, 2010). Transactions that increase the HHI by more than 200 points in highly concentrated markets will be presumed likely to enhance market power. *Id.*