

\*933 Thus, based on 1962 figures, Abex (the third largest manufacturer) merged with Wellman (the largest) so as to acquire 60% Of the sintered metal friction market [FN1]

FN1 The FTC chart also indicates that Abex and Wellman together controlled slightly greater percentages of the submarket in 1960 and 1961

In *United States v Philadelphia Nat'l Bank*, 374 U S 321, 83 S Ct 1715, 10 L Ed 2d 915 (1963), the Supreme Court said

'Specifically, we think that a merger which produces a firm controlling an undue percentage share of the relevant market, and results in a significant increase in the concentration of firms in that market, is so inherently likely to lessen competition substantially that it must be enjoined in the absence of evidence clearly showing that the merger is not likely to have such anticompetitive effects. See *United States v Koppers Co*, 202 F Supp 437 (D C W D Pa.1962)' *United States v Philadelphia Nat'l Bank*, supra at 363, 83 S Ct. at 1741.

In terms of 'undue percentage share' of a market, the Supreme Court has upheld anticompetitive findings upon much lower percentages than in our instant case. *United States v Von's Grocery Co.*, 384 U S 270, 86 S Ct. 1478, 16 L Ed.2d 555 (1966); *United States v Philadelphia Nat'l Bank*, supra. As to this issue also, we affirm.

The third issue concerns whether the FTC had the power to prohibit Abex from acquiring any other company which manufactured or sold sintered metal friction materials for ten years without prior approval by the FTC

Section 11(b) of the Clayton Act provides:

'If \* \* \* the Commission \* \* \* shall be of the opinion that any of the provisions of (sections 2, 3, 7, and 8 of the Clayton Act) have been or are being violated, it shall \* \* \* issue \* \* \* an order requiring such person to cease and desist from such violations, and divest itself of the

stock, or other share capital, or assets, held or rid itself of the directors chosen contrary to the provisions of sections (7 and 8) of this (Act) \* \* \*.' 15 U S C § 21(b) (1964)

[3] We read the statute as authority for the remedy chosen by the Commission. *Ekco Products Co.*, (1963-1965 Transfer Binder) Trade Reg Rep P16,879 (FTC 1964), aff'd, 347 F 2d 745 (7th Cir 1965). See also *FTC v Dean Foods Co.*, 384 U S 597, 86 S Ct 1738, 16 L Ed 2d 802 (1966); *American Cyanamid Co v FTC*, 363 F 2d 757, 771-772 (6th Cir. 1966)

[4] We do find overbreadth in the words 'or sale of' contained in the final paragraph of the order. The submarket as defined by this record really concerned companies which manufactured sintered metal friction materials. The words 'or sale of' are stricken from the order as otherwise approved.

As modified above, the order of the Federal Trade Commission is affirmed.

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