

September 12, 1977

To Our Clients

Takeovers

1. Antitrust Defenses. The decision in Chemetron Corp. v. Crane Co., No. 77 C 2800 (N.D. Ill., Sept. 8, 1977) reflects a swing of the pendulum back from Judge Friendly's admonition in Missouri Portland Cement Co. v. Cargill, Inc., 498 F.2d 851 (2d Cir.), cert. denied 419 U.S. 883 (1974) against courts allowing antitrust defenses to be used as tactical weapons in takeover fights. In Chemetron the court held that the target has standing to raise an antitrust defense to a tender offer and granted a preliminary injunction based on the horizontal competition between raider (5.8% of market) and target (13.6% of market) in "welding fittings" despite the relatively small portion of each company's business represented by welding fittings and raider's offer to divest its weldings fittings business. The court did, however, say that it would consider the divestiture proposal on a motion to vacate the preliminary injunction, "but then only if it appears that the divested business will continue as an independent entity whose competitive position in the newly structured market is comparable to or better than its pre-divestiture position."

2. Pre-Tender Offer Negotiations. The decision in Chemetron illustrates the pitfalls of pre-tender offer negotiations. The court held that failure to disclose specifically discussions with the chief executive officer of the target about employment arrangements and the purchase of his stock on an installment sale basis violated Section 14(e).

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