

Complaint

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IN THE MATTER OF

HOOKER CHEMICAL CORPORATION

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7
OF THE CLAYTON ACT*Docket 8034. Complaint, July 8, 1960—Decision, Aug. 22, 1961*

Consent order requiring a major chemical manufacturer—having sales for fiscal 1958 in excess of \$125,000,000 and in 1957 the largest producer of phenolic molding compound, with about 43% of total sales—to divest itself absolutely, within 90 days, of all machinery and equipment, and all formulae, technical information, know-how, trade secrets, and customer lists related to the production of phenolic molding compound formulations, acquired from the third largest producer which had about 13% of the market, as a result of which acquisition at least 80% of all molding material sales were concentrated in two producers, and to comply with other requirements as in the order below specified.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent has violated and is now violating the provisions of Section 7 of the amended Clayton Act (15 U.S.C., Section 18), hereby issues its complaint, pursuant to Section 11 of the aforesaid Act (15 U.S.C., Section 21), charging as follows:

PARAGRAPH 1. Respondent Hooker Chemical Corporation, hereinafter sometimes referred to as "Hooker", is a corporation organized and existing under the laws of the State of New York with its office and principal place of business located at Buffalo Avenue and 47th Street, Niagara Falls, New York. For nearly fifty years subsequent to its incorporation in 1909, respondent did business under the corporate title "Hooker Electrochemical Company". On May 29, 1958, the official title of the respondent was changed to Hooker Chemical Corporation.

PAR. 2. Monsanto Chemical Company, hereinafter referred to as "Monsanto", is a corporation organized and existing under the laws of the State of Delaware with offices and principal place of business located in St. Louis, Missouri.

PAR. 3. Hooker is a major chemical manufacturer. Currently it produces over 100 chemical and other products, including plastics, phosphates and basic organic and inorganic chemicals which it sells to users in such manufacturing and fabricating markets as electrical equipment, electronics, pharmaceuticals, textiles and metals. Respondent owns and operates eleven manufacturing facilities in nine states—including the States of New York, Ohio, Washington, and

Mississippi—and owns jointly, with others, two additional manufacturing facilities. As of November 30, 1958, Hooker listed total assets of over \$150,000,000 and sales for fiscal 1958 in excess of \$125,000,000. Hooker sells the products it manufactures in its various facilities throughout the United States, and is otherwise engaged in commerce, as “commerce” is defined in the Clayton Act.

Monsanto is one of the largest chemical manufacturers in the United States. It produces a wide range of chemical and other products varying from plastics to agricultural and heavy chemicals at a large number of manufacturing facilities located in several states, including a plastics plant in Springfield, Massachusetts. As of December 31, 1958, Monsanto listed total assets of over \$600,000,000 and net sales for 1958 in excess of \$664,000,000. Monsanto sells the products it manufactures in its various facilities throughout the United States, and is otherwise engaged in commerce, as “commerce” is defined in the Clayton Act.

PAR. 4. Prior to September 1, 1958, Hooker and Monsanto, among others, produced and sold throughout the United States a group of thermosetting plastic products known in the trade as “phenolic molding materials” and sometimes called “phenolic molding compounds” or “phenolic molding powders”, but, for purposes of clarity, hereinafter called “molding materials” or “phenolic molding materials”.

Phenolic molding materials are some of the earliest of those products generally known as “plastics”. The molding material is produced from “phenolic resins”, which are the product of the chemical reaction between phenol and formaldehyde. When special fillers and additives are combined with the resin, the resulting molding material is one which can be molded, with heat and pressure, into an almost unlimited variety of end products.

Phenolic molding materials are sold to processors who mold or otherwise process the material into forms useful as such or in the fabrication of products for subsequent consumer or industrial use. The processor may be an independent company selling the molded product to users, or a division of a company producing the molded product for use in a finished product of its own.

The basic phenolic molding material, called “general purpose”, employs a comparatively inexpensive filler and possesses certain physical characteristics which makes it the most widely used of the phenolic molding materials. The basic material can be varied, however, by the addition of special fillers to give new characteristics especially suited for specific purposes. In this regard, a molding material can be made more resistant to sudden or prolonged impacts,

or more impervious to electricity or to heat, by the addition of special fillers to basic molding material. Consequently, it is an industry practice to divide phenolic molding materials into classes according to their physical characteristics and usefulness, e.g., General Purpose, Electrical, Heat Resistant, Impact, Closure and Special.

Typical uses of phenolic molding materials, according to industry classification, are: General Purpose—camera cases, telephones, handles and bases for household appliances; Impact—industrial pulleys and gears and transmission parts; Closure—sealing materials for liquor and drug packaging; Electrical—electrical circuit parts, radio and television parts; Heat Resistant—steam iron, frying pan and pot handles; Special—washing machine agitators and air conditioning parts.

PAR. 5. Although it produced no phenolic molding materials prior to 1955, respondent became a major factor in that industry by the acquisition in 1955 of Durez Plastics and Chemicals, Inc. Prior to this acquisition, Durez Plastics and Chemicals, Inc. was a New York corporation with principal offices in North Tonawanda, New York. Durez produced and sold phenolic molding materials, phenolic resins and related products and maintained manufacturing facilities in the States of New York, Ohio and Washington. It sold its products to customers throughout the United States and was otherwise engaged in commerce, as "commerce" is defined in the Clayton Act.

In 1954, the year prior to its acquisition by respondent, Durez was the largest producer of phenolic molding materials in the United States, with sales exceeding \$13,500,000, or approximately 35% of the total market. Subsequent to the acquisition of Durez and prior to 1958, respondent substantially increased its market share of phenolic molding materials manufactured for resale.

In the years since the acquisition of Durez by Hooker, two significant producers of molding materials have abandoned their production and withdrawn from that industry. During the same period, no manufacturers have entered the industry to produce molding materials for resale. Entry into this industry is difficult because of low profitability, particularly for companies not producing the basic raw materials (phenol and formaldehyde) used in the production of molding materials, and because of the established reputation of major producers. Both respondent and Monsanto produce phenol and formaldehyde. Additional difficulty exists in the need for capital and know-how for the manufacture of molding materials and the operation of the production facilities.

In addition to acquiring Durez, respondent has effected three other acquisitions in the chemical field during the years 1955 through 1958,

acquiring Niagara Alkali Company in 1955, Oldbury Electro-Chemical Company in 1956, and Shea Chemical Company in 1958.

PAR. 6. By contract effective September 1, 1958, and by mutual agreement and cooperation prior and subsequent thereto, and for the sum of \$621,000, Monsanto transferred to Hooker: (1) all of its machinery and equipment used in the production of phenolic molding materials, together with technical information, including formulae, know-how and engineering assistance, for the manufacture of Monsanto's molding materials; (2) a list, including amounts purchased, of Monsanto's current and past customers purchasing its molding materials; (3) other assets, tangible and intangible, necessary to Hooker's production and sale of Monsanto's molding materials, including a promise by Monsanto not to produce molding materials in the United States for a period of ten years.

PAR. 7. In 1957 three companies sold about 80% of all phenolic molding materials produced in the United States. Respondent was the largest producer with about 43% of total sales. The second largest producer in the industry had about 24% of the market and the third largest producer, Monsanto, had about 13% of the market. Nearly all of the remaining 20% was distributed among six other industry members, some of whom sold only in local or regional markets in which they were located. During 1957 the total annual sales of molding materials exceeded \$40,000,000.

Respondent, by virtue of its acquisition of Monsanto's molding material assets, has increased its market share of all molding materials to approximately 56%. In addition to its increase in market share of all molding materials, and as a result of this acquisition, respondent has substantially increased its market share in the general purpose, electrical, impact and heat resistant lines of molding materials. Further, as a result of this acquisition, at least 80% of all molding material sales are now concentrated in two producers.

PAR. 8. Respondent has violated Section 7 of the amended Clayton Act in that the acquisition of Durez Plastics and Chemicals, Inc. and Monsanto's molding material assets, as hereinbefore described, may have the effect, individually and collectively, of substantially lessening competition or tending to create a monopoly in the production and sale of phenolic molding materials generally, and, also, of general purpose, electrical, impact and heat resistant molding materials in the United States and each of them in the following ways, among others:

1. Actual and potential competition generally in the production and sale of phenolic molding materials and of general purpose,

electrical, impact and heat resistant molding materials will be eliminated.

2. The acquisitions, individually and collectively, may enhance respondent's competitive position in the production and sale of molding materials and of general purpose, electrical, impact and heat resistant molding materials to the detriment of actual and potential competition.

3. Industry-wide concentration of the production and sale of molding materials and of general purpose, electrical, impact and heat resistant molding materials has been and may be increased.

4. The acquisitions, individually and collectively, give respondent the facilities, the market position and the economic power to monopolize or tend to monopolize the production and sale of molding materials and of general purpose, electrical, impact and heat resistant molding materials.

5. Mergers and acquisitions on the part of other molding material producers may be fostered with a consequent increase in economic concentration and tendency toward monopoly in the phenolic molding material field generally.

PAR. 9. The foregoing acquisitions, acts and practices of respondent, as hereinbefore alleged, constitute a violation of Section 7 of the amended Clayton Act (15 U.S.C., Section 18), as amended and approved December 29, 1950.

Mr. Thomas A. Sterner for the Commission.

Sage, Gray, Todd & Sims, by *Mr. Melber Chambers*, and *Cahill, Gordon, Reindel & Ohl*, by *Mr. Jerrold G. Van Cise*, all of New York, N.Y., for the respondent.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On July 8, 1960, the Federal Trade Commission issued its complaint against the above-named respondent charging it with violating the provisions of Section 7 of the Clayton Act, as amended. On June 23, 1961, the respondent and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist and to divest in accordance with Section 3.25(a) of the Rules of Practice and Procedure of the Commission.

Under the foregoing agreement, the respondent admits the jurisdictional facts alleged in the complaint and agrees, among other things, that the order to cease and desist and to divest there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondent of all rights to challenge or

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contest the validity of the order issuing in accordance therewith; and recites that the said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that it is for settlement purposes only, does not constitute an admission by the respondent that it has violated the law as alleged in the complaint, and that said complaint may be used in construing the terms of the order. The hearing examiner finds that the content of the said agreement meets all the requirements of Section 3.25(b) of the Rules of Practice.

Such agreement further provides that the charge that respondent's acquisition of Durez Plastics & Chemicals, Inc., violated Section 7 of the amended Clayton Act should be dismissed for the reasons set forth in an Appendix A attached thereto.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Section 3.21 of the Rules of Practice; and in consonance with the terms of said agreement, the hearing examiner makes the following jurisdictional findings and order.

JURISDICTIONAL FINDINGS

1. Respondent Hooker Chemical Corporation is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its principal office located at 666 Fifth Avenue, in the City of New York, State of New York (erroneously cited in the complaint as Buffalo Avenue and 47th Street, Niagara Falls, New York.)

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under Section 7 of the Clayton Act, as amended.

ORDER

I

It is ordered, That respondent Hooker Chemical Corporation, and its officers, directors, agents, representatives, and employees, shall, within ninety (90) days of the service of this order upon it, divest itself absolutely, in good faith, as a unit and to the same purchaser, of all right, title, privilege and interest in and to all machinery

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and equipment now owned by respondent, and all formulae, technical information, know-how, trade secrets and customer lists related to the production and sale of phenolic molding compound formulations, acquired from Monsanto Chemical Company, together with all additions to, and improvements on, such assets. The divestiture shall proceed in a manner consistent with the objective of continuing the production and sale of the phenolic molding compound formulations divested.

It is further ordered, That respondent Hooker Chemical corporation:

(1) make available to the purchaser of the assets divested, for a period of six (6) months from the date of the divestiture, at respondent's cost, (to be disclosed to and held in confidence by said purchaser) the purchaser's requirements of lump resins and resin compounds needed to manufacture said phenolic molding compound formulations, and, the purchaser's requirements of said phenolic molding compound formulations, to enable the purchaser to develop its own manufacturing facilities for said products without interrupting the supply of said molding compounds to purchasers.

(2) provide the purchaser of the divested assets with engineering assistance in the setting up of test equipment and methods of testing, designed to assure that the phenolic molding compounds produced using the resins and/or formulae, technical information, know-how and trade secrets, furnished will meet the specifications for such molding compounds heretofore maintained by respondent.

(3) provide the purchaser of the divested assets with a list of customers that made any purchases of said phenolic molding compound formulations from January 1, 1957 to the date of this order. Such list shall include the formulation number and annual quantities, in dollars and pounds, purchased by each customer.

II

It is further ordered, That respondent cease and desist, for a period of ten (10) years from the receipt of this order, from the acquisition, directly or indirectly, of any shares of stocks or assets of any manufacturer or distributor engaged in the manufacture, sale or distribution of phenolic molding compounds in the United States.

III

It is further ordered, That in such divestitures hereinbefore mentioned, none of the said assets, properties, rights and privileges, tangible or intangible, shall be sold or transferred, directly or in-

directly, to anyone who, at the time of the divestiture, is a stockholder, officer, director, employee or agent of, or otherwise, directly or indirectly connected with, or under the control of, respondent or any of respondent's subsidiaries or affiliated companies.

IV

It is further ordered, That the allegations of the complaint charging that respondent's acquisition of Durez Plastics & Chemicals, Inc., violated Section 7 of the amended Clayton Act be dismissed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 22d day of August 1961, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.