

MINNESOTA MINING AND MANUFACTURING COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT

Docket 7973. Complaint, June 24, 1960—Decision, Aug. 24, 1961

Consent order requiring the nation's largest manufacturer of electrical insulation tapes, among other products, and with a record of 14 acquisitions during the five-year period 1952 to 1956, to sell as a unit its Insulation and Wires division—before the acquisition the third largest distributor of electrical insulation products and consisting of three entities with dis-

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tribution in the same nation-wide areas as respondent—which it acquired in August 1956 from Essex Wire Corp., and requiring it to comply with other provisions of the order of divestiture as set forth below in full.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described has violated and is now violating the provisions of Section 7 of the Clayton Act (U.S.C. Title 15, Sec. 18) as amended, hereby issues its complaint pursuant to Section 11 of the aforesaid Act (U.S.C. Title 15, Sec. 21), charging as follows:

PARAGRAPH 1. Respondent Minnesota Mining and Manufacturing Company, hereinafter referred to as Minnesota Mining, is a corporation organized and existing under the laws of the State of Delaware with its principal office and place of business located at 900 Bush Street, St. Paul 6, Minnesota.

For a number of years beginning prior to 1953 Minnesota Mining has been a highly diversified company manufacturing and selling a number of product lines and segments thereof including the following: coated abrasives and related products; tapes including cellophane, masking, industrial and electrical; sound-recording magnetic tape; adhesives and coatings; roofing granules; graphic products including reflective, printing and duplicating products; color pigments; sulfuric acid; crushed stone, sand and ready mixed cement; and gummed paper, cloth tapes, and gummed labels. It has been also engaged in leasing and servicing signs for highway advertising. Since 1953 Minnesota Mining has begun the manufacture and sale of reinforced plastics, contact bond adhesives, heat sealable polyester film and certain types of chemical products.

It is the largest manufacturer of magnetic tapes, electrical insulation tapes, pressure sensitive plastic backing including cellophane tapes, and is the largest or one of the largest manufacturers of coated abrasive products, roofing granules, graphic products and highway advertising material.

Minnesota Mining has a world-wide business with properties and facilities throughout the United States and in many foreign countries. It is and has been engaged in the manufacture, sale, and distribution of its products in commerce, as "commerce" is defined in the Clayton Act, throughout the several States of the United States and in the District of Columbia.

Minnesota Mining has branch offices and warehouses in nineteen cities throughout the United States through which primary distri-

bution is made to wholesalers and distributors in a wide variety of trades. Sales are also made direct to large industrial and other consumers. During the early 1950's it sold its electrical insulation tape through many distributors and to original equipment manufacturers throughout the United States with the exception of the Eastern Seaboard where its electrical insulation tape was sold directly to consumers.

Minnesota Mining's net sales increased from \$108,246,000 in 1948 to \$185,242,000 in 1952. During this five year period its net income increased from \$13,235,000 to \$16,090,000, and its total assets increased from \$88,902,000 to \$153,275,000. From 1952 to 1956 Minnesota Mining's net sales increased from \$185,242,000 to \$330,808,000, its net income increased from \$16,090,000 to \$38,724,000, and its total assets increased from \$153,275,000 to \$255,084,000.

During the five year period 1952 to 1956 a substantial portion of Minnesota Mining's growth was achieved by 14 acquisitions, 12 domestic and two foreign. Nine of the 12 domestic acquisitions included all the assets of the companies; one was the acquisition of patents; one was an acquisition of a chemical division belonging to another company; and one an acquisition of a research and development partnership. The acquisitions fell into six categories, all of which were related to the existing Minnesota Mining operations. The product groups with the number of acquisitions in each are as follows:

Electrical insulation (6 domestic and 2 foreign companies)-----	8 acquisitions
Adhesives -----	1 acquisition
Reinforced plastics -----	2 acquisitions
Chemicals, including resins -----	1 acquisition
Paper products (including electrical insulation paper)-----	1 acquisition
Video recording equipment -----	1 acquisition

The electrical insulation products of the companies acquired in the electrical insulation industry were complementary to the electrical insulation tape manufactured and sold by Minnesota Mining. The principal electrical insulation product lines acquired were varnished fabrics and paper, manufactured mica, industrial laminates, insulating liquid varnish, extruded plastic tubing, flexible treated tubing and sleeving, and steatite.

In June 1953, Minnesota Mining acquired American Lava Corporation. American Lava Corporation was engaged in the manufacture and sale of steatite ceramic insulation products and other ceramic products throughout the United States. These products were used principally as electrical insulation in radio and television components and household appliances, and as components for textile

machinery and processes. At the time of its acquisition American Lava Corporation was the largest producer of steatite. In 1952 American Lava Corporation's net sales were \$7,515,000 and its total sales of steatite were \$5,204,000. Its sales of steatite for electrical insulation were \$3,383,000, and accounted for approximately one third of the total sales of steatite in the electrical insulation industry. Most of its sales were made directly to original equipment manufacturers.

In July 1953, Minnesota Mining acquired Irvington Varnish & Insulator Company, hereinafter referred to as Irvington. Irvington was engaged in the manufacture and sale of electrical insulation (varnished fabrics and paper, flexible treated tubing and sleeving, extruded plastic tubing, and liquid insulation varnish) and certain other products throughout the United States. Prior to its acquisition, Irving was the largest producer and seller of varnished fabrics and paper, and of extruded plastic tubing for electrical insulation. In 1952 Irvington accounted for approximately two fifths of the total industry sales of varnished fabrics and paper and for approximately one third of the total industry sales of extruded plastic tubing. Its net sales in 1952 were \$13,540,000, of which approximately 70 percent was in electrical insulation products. Its sales of electrical insulation products were made to original equipment manufacturers and to electrical insulation distributors.

In November 1955, Minnesota Mining acquired Mica Insulator Company. Mica Insulator Company was engaged in the manufacture and sale of manufactured mica products industrial laminated sheets, varnished fabrics and paper for use as electrical insulation, and certain other products throughout the United States. In 1955, Mica Insulator Company was the second largest producer of mica insulation, accounting for approximately 20 percent of total industry sales. In varnished fabrics and paper it was the seventh largest producer with approximately 5 percent of total industry sales in 1955. Its net sales of electrical insulation products in 1955 were \$5,672,000. Its sales of electrical insulation products were made to original equipment manufacturers and to electrical insulation distributors.

At the time Mica Insulator Company was acquired by Minnesota Mining it owned 20 percent of the stock of Micanite of Canada, Ltd. and 33 $\frac{1}{3}$ percent of the stock of Samica Corporation. After Mica Insulator Company was acquired, Minnesota Mining purchased the remaining stock of said companies. Samica Corporation was engaged in the manufacture and sale of reconstituted mica sheets used for electrical insulation throughout the United States. The manu-

facture of reconstituted mica sheets was a relatively new process in 1954, with Samica Corporation being one of the first companies to produce this new product. Sales of mica sheets in 1954 by Samica Corporation were \$124,000.

By 1959, Minnesota Mining's net sales had increased to \$446,580,000, its net income had increased to \$60,262,000, and its total assets had increased to \$351,838,000.

PAR. 2. In March 1956, Minnesota Mining acquired all of the assets of Prehler Brothers, Incorporated and Prehler Electrical Insulation Company which were operating as Prehler Electrical Insulation Company, hereinafter referred to as Prehler. Prehler was a corporation organized under the laws of the State of Illinois.

Prehler was engaged in the purchase, sale and distribution of electrical insulation products and other products in commerce, as "commerce" is defined in the Clayton Act. Prehler's principal sales office was located in Chicago, Illinois, and its other sales offices were in the following cities: Cleveland and Dayton, Ohio; Detroit, Michigan; Minneapolis and St. Paul, Minnesota; and Milwaukee, Wisconsin. Prehler sold and distributed electrical insulation products throughout the various sections of eight states, including Minnesota, Wisconsin, Iowa, Illinois, Michigan, Indiana, Ohio and Kentucky and in sections of three other adjacent states.

Prehler purchased substantial amounts of electrical insulation products from Minnesota Mining and other electrical insulation manufacturers. Electrical insulation products sold by Prehler included varnished fabrics and paper, manufactured mica, industrial laminates, insulating liquid varnish, electrical insulation tape, flexible tubing and sleeving and extruded plastic tubing. Its sales were made to original equipment manufacturers and to motor repair and rewind shops in competition with others including Insulation and Wires, Inc.

Prehler was the second largest distributor of electrical insulation products in the United States and in the sections of the country in which it sold electrical insulation products. In 1956 its total sales of all electrical insulation products were \$6,471,000 and its total assets amounted to approximately \$1,500,000.

PAR. 3. In August 1956, Minnesota Mining acquired the principle assets of Insulation and Wires, Inc., hereinafter referred to as IWI, a wholly-owned subsidiary of Essex Wire Corporation. IWI consisted of (1) Insulation and Wires, a Missouri corporation, (2) Insulation and Wires, a Georgia corporation, and (3) Insulation and Wires, a Division of the Essex Corporation, a Michigan corporation.

IWI was engaged in the purchase, sale and distribution of electrical insulation products and other products in commerce, as "commerce" is defined in the Clayton Act. Its principal office was located at Ft. Wayne, Indiana, and its nine sales offices were located throughout the United States, namely: Newark, New Jersey; Boston, Massachusetts; Detroit, Michigan; St. Louis, Missouri; Houston, Texas; Los Angeles, and San Francisco, California; Portland, Oregon and Atlanta, Georgia.

A substantial amount of IWI's total purchases were electrical insulation products which were purchased from electrical insulation manufacturers. Electrical insulation products sold by IWI included varnished fabrics and paper, manufactured mica, industrial laminates, insulating liquid varnish, electrical insulation tape, flexible tubing and sleeving and extruded plastic tubing. Its principal sales were made to motor repair and rewind shops and original equipment manufacturers in competition with others including Prehler.

IWI was the third largest distributor of electrical insulation products in the United States and one of the few distributors who sold electrical insulation on a nation-wide basis. In 1956, its total sales of all electrical insulation products were \$6,126,000, and its total assets amounted to approximately \$1,772,000. Its sales of electrical insulation products in the areas in which Prehler did business were over \$1,000,000.

PAR. 4. Electrical insulation products are used in electric motors, transformers, generators, electric cables, appliances, and other electrical and electronic equipment. Each of the electrical insulation product lines have approximately 15 to 20 manufacturers and most of these manufacturers are small companies who concentrate their efforts in one product line. Some manufacturers use most of their electrical insulation products in their own integrated operation. Practically all electrical insulation manufacturers sell electrical insulation products to original equipment manufacturers and to electrical insulation distributors. The electrical insulation distributors in turn sell to original equipment manufacturers and to other classes of customers including motor repair and rewind shops.

Prior to its acquisitions in the electrical insulation industry, Minnesota Mining was the largest producer of electrical insulation tape. It was the first company to develop and sell this product on a commercial basis. As other companies entered this market, Minnesota Mining's market position declined to approximately 84 percent in 1952 and 66 percent in 1958, with sales of \$5,112,000 and \$4,912,000 respectively.

Minnesota Mining's acquisitions of electrical insulation manufacturers between 1952 and 1956 brought under its control substantial shares of major electrical insulation product lines and made it the largest company in the United States engaged in the manufacture and sale of electrical insulation products to original equipment manufacturers and electrical insulation distributors. These acquisitions included:

(1) In 1955, Irvington and Mica Insulator Company together accounted for approximately 33 percent of the varnished fabrics and paper market. In 1958, their combined sales were approximately 19 percent of the industry's total sales of varnished fabrics and paper and they ranked as the second largest seller.

(2) Irvington was the largest seller of extruded plastic tubing at the time of its acquisition and has continued to hold this market position, accounting for approximately 33 percent of the industry's total sales of extruded plastic tubing.

(3) Irvington's sales of flexible treated tubing and sleeving has increased from approximately 7 percent of the industry's total sales in 1952 to approximately 11 percent in 1958.

(4) Mica Insulator Company has ranked as the second largest company in the sale of manufactured mica with approximately 20 percent of total industry sales of this product since 1955.

(5) American Lava Corporation has ranked as the largest company in the sales of steatite, with approximately 33 percent of total industry sales of steatite in 1952 and approximately 28 percent of said sales in 1958.

Minnesota Mining's total net sales of all electrical insulation products were \$44,497,000 in 1956 and \$40,237,000 in 1958. Its domestic sales of varnished fabrics and paper, manufactured mica, industrial laminates, insulating liquid varnish, electrical insulation tape, extruded plastic tubing, flexible treated tubing and sleeving, and steatite were \$21,687,000 in 1956 and \$15,709,000 in 1958.

Prior to their acquisitions, Prehler and IWI were two of the three largest electrical insulation distributors competing with Minnesota Mining in the sale of electrical insulation products to original equipment manufacturers and others in various sections of the country. Prehler and IWI accounted for approximately 15 percent and 14 percent, respectively, of the total sales of all electrical insulation products sold through electrical insulation distributors in 1956.

With these acquisitions, Minnesota Mining became the largest distributor of electrical insulation products and has continued to hold

this market position, accounting for approximately 29 percent of the total sales of all electrical insulation products sold and distributed by electrical insulation distributors in the United States. During the same period of time the sales of the next largest distributor of electrical insulation products declined from approximately 24 percent to approximately 20 percent of said total sales. In 1958, Minnesota Mining's sales of all electrical insulation products through its acquired distributors amounted to \$10,665,000.

The acquisitions of Prehler and IWI made Minnesota Mining the second largest distributor of seven of the electrical insulation product lines which it manufactured, accounting for approximately 18 percent of the total sales of said products. In 1958, Minnesota Mining's sales of said seven electrical insulation products through its acquired electrical insulation distributors had increased to about 21 percent of the total sales of said products by electrical insulation distributors, while sales of said seven products by the largest electrical insulation distributor declined to less than 21 percent. In 1958, Minnesota Mining's sales of said seven electrical insulation products through its acquired distributors were \$4,820,000.

In 1956, Prehler accounted for approximately 27 percent of the sales of the aforesaid seven electrical insulation products sold by electrical insulation distributors in the sections of the country in which it sold electrical insulation products. In 1958, Prehler's sales of these products accounted for approximately 32 percent of the total sales of these products in said sections of the country.

Prior to the acquisitions of Prehler and IWI a number of electrical insulation manufacturers were suppliers of electrical insulation products to Prehler and IWI. Since the acquisitions many of these suppliers have been discontinued.

Prior to the acquisitions of Prehler and IWI, a number of electrical insulation distributors purchased electrical insulation products for resale from Minnesota Mining and from the manufacturers of electrical insulation products who were acquired by Minnesota Mining. Since said acquisitions many of these electrical insulation distributors have been foreclosed from purchasing electrical insulation products from Minnesota Mining and its acquired companies.

PAR. 5. The effect of the aforesaid acquisitions by Minnesota Mining of Prehler and IWI, and of each of them, may be substantially to lessen competition or to tend to create a monopoly in the manufacture, distribution and sale of electrical insulation products, individually and collectively, in various sections of the country within the meaning of Section 7 of the Clayton Act as amended.

The aforesaid effects include the actual or potential lessening of competition and a tendency to create a monopoly in the following ways, among others:

1. Minnesota Mining, as the largest producer of electrical insulation tape, and with its acquisitions of leading manufacturers of other electrical insulation products, by acquiring two of the three largest distributors of electrical insulation products in the United States, has extended and integrated its business in such a manner as to substantially increase its position in the manufacture, sale and distribution of electrical insulation products; and it may exercise the inherent powers of its acquired position to substantially lessen competition or tend to create a monopoly in the manufacture, sale and distribution of electrical insulation products.

2. Manufacturers of electrical insulation products have been foreclosed from a substantial share of the markets for said products.

3. Competition has been eliminated between Prehler and IWI in the distribution and sale of electrical insulation products in the sections of the country in which they were competing, and potential competition has been eliminated between said companies throughout the United States.

4. Actual and potential competition has been eliminated between Minnesota Mining and the two acquired distributors.

5. As a leading manufacturer and distributor of electrical insulation products Minnesota Mining has acquired a position whereby it may:

- (a) Manipulate prices or use other means to lessen competition or tend to create a monopoly; and

- (b) Concentrate the full impact of its sales, promotional and merchandising experience and ability on one of its electrical insulation products, or on one selected section of the country.

6. Concentration of the manufacture, sale and distribution of electrical insulation products may be increased.

PAR. 6. The foregoing acquisitions, acts and practices of respondent, as hereinbefore alleged and set forth, constitute a violation of Section 7 of the Clayton Act as amended and approved December 29, 1950.

Mr. J. Wallace Adair for the Commission.

Connolly, Tucker, Post & Lyons, St. Paul, Minn., for respondent.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On June 24, 1960, the Federal Trade Commission issued its complaint against the above-named respondent charging it with vio-

lating the provisions of Section 7 of the Clayton Act, as amended. On July 19, 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 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 Prehler Electrical Insulation Company violated Section 7 of the amended Clayton Act should be dismissed for the reasons set forth in an Appendix A attached thereto.

As also set forth in the aforesaid agreement and for the purposes thereof, electrical insulation products shall consist of the following sixteen products and any other product, which may be introduced as a replacement, substitution, or improvement on said sixteen products, which are sold for use by manufacturers of electrical appliances, electrical machinery, electronics apparatus, communication and power cable, and in the repair of motors, generators and transformers.

- (1) Varnished fabrics and paper.
- (2) Manufactured electrical mica.
- (3) Coated electrical sleeving (formerly known as flexible treated tubing and saturated sleeving).
- (4) Industrial laminates.
- (5) Insulating liquid varnish.
- (6) Electrical insulation tape (pressure sensitive).
- (7) Extruded plastic tubing.
- (8) Steatite.
- (9) Polymeric films such as cellulose acetate, polyvinyl chloride, polypropylene, polyethylene, polyester, fluorinated ethylene propylene, and polytetrafluorethylene.

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- (10) Vulcanized fibre, fish paper, asbestos paper, kraft paper (including condenser tissue), rag paper, and transformer board.
- (11) Untreated cotton and glass tapes.
- (12) Encapsulating resins and molding compounds—polyester, epoxy, phenolic alkyds, silicone, waxes, and asphaltic compounds.
- (13) Wire enamels.
- (14) Natural, butyl, buna, neoprene, and silicone rubber.
- (15) Liquid dielectrics for distribution transformers, power transformers, circuit breakers, specialty transformers, and capacitors.
- (16) Hardwood slot sticks.

For the further purposes of this agreement an electrical insulation distributor is a firm which purchases a line of electrical insulation products, from manufacturers other than a parent or subsidiary, for stock and resale.

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 Minnesota Mining and Manufacturing Company is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 900 Bush Avenue, St. Paul, Minnesota.
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 Minnesota Mining and Manufacturing Company, its subsidiaries, officers, directors, agents, representatives and employees, shall:

1. On or before January 1, 1962, divest itself absolutely, in good faith, as a unit by sale to a purchaser approved by the Commission of all assets, properties, rights and privileges, including but not

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limited to all trade-marks, trade names, customer lists, contracts, business and good will acquired by respondent as a result of its acquisition of all of the assets of Insulation and Wires division of the Essex Wire Corporation, and all of the assets of Insulation and Wires Incorporated, a Missouri corporation, and all of the assets of Insulation and Wires Incorporated, a Georgia corporation (hereinafter collectively referred to as Insulation and Wires and presently operated as a division of respondent), together with the additions and equipment of whatever description that is presently utilized by respondent in its Insulation and Wires division, in such manner as to restore Insulation and Wires as a competitive entity in substantially the same competitive standing it formerly had in the sale and distribution of electrical equipment and electrical insulation products at the time of the acquisition.

2. For a period of five (5) years from the date of divestiture, make available to said purchaser all of the electrical insulation products manufactured by respondent and sold by it to any electrical insulation distributors on the same terms and at the same prices as such products are sold by it to such other distributors.

3. Transfer to said purchaser all sales employees who are presently employed by respondent in its Insulation and Wires division.

II

It is further ordered, That in the divestiture of Insulation and Wires by respondent none of the said assets, properties, rights and privileges, tangible or intangible, shall be sold or transferred, directly or indirectly, to anyone, who at the time of the divestiture, is an 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.

III

It is further ordered, That for a period of five (5) years from the date of this order respondent shall continue in good faith to operate its subsidiary Prehler Electrical Insulation Company as an electrical insulation distributor and shall cause said Company to purchase not less than 22% of its total annual purchases of electrical insulation products from suppliers other than respondent or its subsidiaries.

IV

It is further ordered, That for a period of ten (10) years from the date of this order respondent shall cease and desist from acquir-

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ing, directly or indirectly, through subsidiaries or otherwise, the assets, stock, or any equity in any electrical insulation distributor in the United States.

V

It is further ordered, That, except for the restrictions set forth in Paragraph III of this order, the allegations of the complaint charging that respondent's acquisition of Prehler Electrical Insulation Company 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 24th day of August 1961, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent herein shall within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order contained in said initial decision.