

Complaint

IN THE MATTER OF

GEORGE N. ZOROS ET AL.
TRADING AS GEORGE N. ZOROS

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket C-526. Complaint, July 16, 1963—Decision, July 16, 1963

Consent order requiring Chicago manufacturing furriers to cease violating the Fur Products Labeling Act by failing, on labels on fur products, to show the true animal name of the fur and to disclose when the fur was artificially colored, and failing in other respects to comply with labeling requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that George N. Zoros, and Theodore Zoros, individually and as copartners trading as George N. Zoros, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. George N. Zoros and Theodore Zoros are individuals and copartners trading as George N. Zoros with their office and principal place of business located at 336 North Michigan, Chicago, Illinois. Respondents are manufacturers and retailers of fur products.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising, and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products and have manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce as the terms "commerce", "fur", and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section

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4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed:

(a) To show the true animal name of the fur used in the fur product.

(b) To disclose that the fur products contained or were composed of bleached, dyed or otherwise artificially colored fur when such fur products were bleached, dyed or otherwise artificially colored.

PAR. 4. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was mingled with nonrequired information, in violation of Rule 29(a) of said Rules and Regulations.

(c) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in handwriting, in violation of Rule 29(b) of said Rules and Regulations.

(d) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth in the required sequence, in violation of Rule 30 of said Rules and Regulations.

(e) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on labels with respect to each section of fur products composed of two or more sections containing different animal furs, in violation of Rule 36 of said Rules and Regulations.

(f) Required item numbers were not set forth on labels, in violation of Rule 40 of said Rules and Regulations.

PAR. 5. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and constitute

unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Fur Products Labeling Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondents George N. Zoros and Theodore Zoros are individuals and copartners trading as George N. Zoros with their office and principal place of business located at 336 North Michigan, Chicago, Illinois.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents George N. Zoros and Theodore Zoros, individually and as copartners, trading as George N. Zoros or under any other trade name, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale, in commerce, or the transportation or distribution in commerce of any fur products; or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation or distribution, of any fur product which has been made in whole or in part of fur which has been shipped and received in com-

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merce as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act do forthwith cease and desist from:

A. Misbranding fur products by:

1. Failing to affix labels to fur products showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.
2. Abbreviating information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.
3. Mingling information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder with nonrequired information.
4. Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in handwriting.
5. Failing to set forth the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in the sequence required.
6. Failing to set forth separately on labels attached to fur products composed of two or more sections containing different animal furs the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder with respect to the fur comprising each section.
7. Failing to set forth on labels the item number or mark assigned to a fur product.

It is further ordered, That the respondents herein 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 this order.

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IN THE MATTER OF

GEMEX PRECISION METALS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-527. Complaint, July 17, 1963—Decision, July 17, 1963*

Consent order requiring Union, N. J., distributors of watchbands consisting wholly or substantially of parts imported from Hong Kong, to cease selling the watchbands—to manufacturers, distributors, and retailers of watches—with no disclosure of their foreign origin.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Gemex Precision Metals, Inc., a corporation, and Everett L. Ackley individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Gemex Precision Metals, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1200 Commerce Avenue in the city of Union, State of New Jersey.

Respondent Everett L. Ackley is president of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of watchbands to manufacturers and distributors of watches as well as to retailers for resale to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said product, when sold, to be shipped from their place of business in the State of New Jersey to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain, and at all times herein mentioned have maintained,

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a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Said watchbands consist in whole or in substantial part of components which were manufactured in, and imported from Hong Kong. When offered for sale or sold by respondents, said watchbands do not bear disclosure showing that they are substantially of foreign origin.

PAR. 5. By the aforesaid practices, respondents place in the hands of watch manufacturers, distributors and retailers, means and instrumentalities by and through which they may mislead the public as to the place of origin of said watchbands or the substantial components thereof.

PAR. 6. In the absence of an adequate disclosure that a product, including watchbands, is of foreign origin, the public believes and understands that it is of domestic origin, a fact of which the Commission takes official notice.

As to the aforesaid articles of merchandise, a substantial portion of the purchasing public has a preference for said articles which are of domestic origin, of which fact the Commission also takes official notice. Respondents' failure to clearly and conspicuously disclose the country of origin of said articles of merchandise, or, substantial components thereof, is, therefore, to the prejudice of the purchasing public.

PAR. 7. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of metal expansion watchbands of the same general kind and nature as that sold by respondents.

PAR. 8. The use by respondents of the false, misleading and deceptive representations and practices hereinabove set forth, and the failure to disclose the foreign origin of their watchbands or of substantial components of their watchbands, have had, and now have, the capacity and tendency to mislead and deceive purchasers or members of the buying public in the manner aforesaid, and thereby to induce them to purchase respondents' watchbands.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Gemex Precision Metals, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1200 Commerce Avenue, in the city of Union, State of New Jersey.

Respondent Everett L. Ackley is an officer of the said corporation, and his address is the same as that of the said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Gemex Precision Metals, Inc., a corporation, and its officers, and Everett L. Ackley individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of watchbands or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, selling or distributing any such products which are substantially, or which contain a substantial

part or parts, of foreign origin or fabrication without affirmatively disclosing the country or place of foreign origin or fabrication thereof on the products themselves, by marking or stamping on an exposed surface, or on a label or tag affixed thereto, of such degree of permanency as to remain thereon until consummation of consumer sale of the products, and of such conspicuousness as to be likely observed and read by purchasers and prospective purchasers making casual inspection of the products.

2. Offering for sale, selling, or distributing any such product packaged, or mounted in a container, or on a display card, without disclosing the country or place of foreign origin of the product, or substantial part or parts thereof, on the front or face of such packaging, container, or display card, so positioned as to clearly have application to the product so packaged or mounted, and of such degree of permanency as to remain thereon until consummation of consumer sale of the product, and of such conspicuousness as to be likely observed and read by purchasers and prospective purchasers making casual inspection of the product as so packaged or mounted.

3. Placing in the hands of manufacturers, distributors, retailers, and others, means and instrumentalities by and through which they may deceive and mislead the purchasing public concerning any merchandise in the respects set out above.

It is further ordered, That the respondents herein 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 this order.

IN THE MATTER OF

DRESSER INDUSTRIES, INC., ET AL.
AND NATIONAL LEAD COMPANY

ORDERS, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Dockets 7095 and 7096. Complaints, Mar. 26, 1958—Decisions,
July 24, 1963*

Orders dismissing, for the reason that the evidence of record does not provide a sufficient basis for divestiture orders, complaints charging the two largest producers of barite in the United States with violation of Sec. 5 of the Federal Trade Commission Act and Sec. 7 of the Clayton Act by reason of their acquisition of the assets of several independent barite producers.

COMPLAINT*

The Federal Trade Commission, having reason to believe that the parties named in the caption hereof and hereby made respondents herein, and hereinafter more particularly designated and described, have been and are using unfair methods of competition and unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. Sec. 45), and have violated and are now violating the provisions of Section 7 of the Clayton Act (15 U.S.C. Sec. 18), and it appearing to the Commission that a proceeding by it in respect thereof would be to the interest of the public, the Commission hereby issues its complaint, charging as follows:

COUNT I

Charging violations of Section 5 of the Federal Trade Commission Act, the Commission alleges:

PARAGRAPH 1. Respondent, Dresser Industries, Inc., hereinafter referred to as "Dresser," is a corporation organized and existing under the laws of the State of Pennsylvania, with its office and principal place of business at Republic National Bank Building, Dallas, Texas.

PAR. 2. Respondent, Magnet Cove Barium Corporation, hereinafter referred to as "Magnet Cove," is a corporation organized and existing under the laws of the State of Arkansas, with its office and principal place of business at Houston, Texas. Its mailing address is Post Office Box 6504, Houston, Texas.

PAR. 3. Dresser is engaged, among other things, in the production and sale of oil and gas field equipment and supplies in commerce, as "commerce" is defined in the Federal Trade Commission Act. Dresser owns all, or substantially all, of the common stock of Magnet Cove, and directs and controls the acts and policies of Magnet Cove.

PAR. 4. Magnet Cove is engaged in the production and sale of barite, a barium mineral, in commerce, as "commerce" is defined in the Federal Trade Commission Act. It is now, and for several years prior hereto has been, one of the two principal factors in the producing, processing, buying and selling of barite. It has acted for and on behalf of Dresser as well as for and on its own behalf in doing and performing the acts and practices hereinafter alleged.

PAR. 5. The production and sale of barite in the United States is a highly concentrated industry of rapidly growing importance. In 1953 the production of crude barite in the United States amounted

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to approximately 920,000 short tons, and by 1956 such production had increased to approximately 1,350,000 short tons. Substantial quantities of crude barite are also imported into the United States, particularly from Canada. In 1953 total sales of crushed and ground barite in the United States amounted to approximately 920,000 short tons having a plant value of approximately \$20,400,000. By 1956 such sales had increased to approximately 1,500,000 short tons having a plant value of approximately \$41,600,000.

The largest use of barite, and one that takes more than three-fourths of the total output, is as a weighting agent in rotary well-drilling fluids. In this use, because of its high specific gravity, low cost, and other desirable technical factors, barite does not have an economical substitute. Substantial quantities are also used as a raw material in manufacturing various barium compounds; in the production of lithopone, a white pigment used principally in paints and in the production of glass, paint, rubber and other products.

PAR. 6. Magnet Cove is the largest producer of barite in the United States, its volume of production and sales having sharply increased in the past few years. In 1953 its production of crude barite was approximately 220,000 tons, and by 1956 it had increased to approximately 435,000 tons; and in 1953 its sales of crushed and ground barite amounted to approximately \$5,437,000, and by 1956 they had increased to approximately \$18,224,000. During the same period the production and sales of the company which now occupies second position also increased at a rapid rate, but it was not able to maintain first position which it occupied in 1953. Magnet Cove's share of the total United States production of crude barite increased from approximately 24% in 1953, to approximately 32% in 1956, and its share of the total sales of crushed and ground barite increased from approximately 27% in 1953, to approximately 44% in 1956. The increases in the volume of production and sales of both companies during this period were accompanied by substantial increases in the extent to which the industry was concentrated in them. The two companies combined accounted for approximately 54% of the production of crude barite in the United States in 1953, and approximately 63% in 1956; and they accounted for approximately 74% of the total sales of crushed and ground barite in 1953, and approximately 82% in 1956.

PAR. 7. Magnet Cove has acquired, directly or indirectly, and continues to exercise substantial domination and control over the producing, processing, buying and selling of barite by certain corporations, partnerships, and individuals which were formerly sub-

stantial competitors of Magnet Cove and of others in the business of producing, processing, buying and selling barite. Said domination and control was acquired for the purpose or with the effect of lessening or eliminating, suppressing and preventing competition with Magnet Cove by such corporations, partnerships and individuals in the producing, processing, buying and selling of barite, of lessening and suppressing competition generally in the producing, processing, buying and selling of barite, and of tending to create and maintain a monopoly in Magnet Cove. Said domination and control over the producing, processing, buying and selling of barite by such corporations, partnerships and individuals has been acquired by Magnet Cove by and through the use of the methods, acts and practices set out in the following subparagraphs (a) and (b), among others:

(a) Magnet Cove has acquired, directly or indirectly, all, or a substantial part, of the assets of certain corporations, including those described more particularly in the following subsections (1) and (2). Such corporations were formerly independent producers, processors, buyers or sellers of barite, but as a result of said acquisitions, their businesses or assets are now being operated by Magnet Cove or under and subject to its control.

(1) Canadian Industrial Minerals, Limited, is a corporation organized and existing under the laws of the Province of Nova Scotia, Dominion of Canada, with its office and principal place of business at 67 Yonge Street, Toronto, Ontario, Canada. Prior to November 1, 1955, said corporation was engaged in the production and sale of barite. For several years prior to the acquisition of its assets by Magnet Cove, said corporation sold a significant quantity of barite in commerce, as "commerce" is defined in the Federal Trade Commission Act. On or about November 1, 1955, Magnet Cove acquired all the assets of Canadian Industrial Minerals, Limited.

(2) Superbar Company is a corporation organized and existing under the laws of the State of Missouri, with its office and principal place of business at Potosi, Missouri. Prior to February 28, 1957, said corporation was engaged in the producing, processing, buying and selling of barite in commerce, as "commerce" is defined in the Federal Trade Commission Act. For several years prior to the acquisition of its assets by Magnet Cove, said corporation was a significant producer, processor, buyer and seller of barite. On or about February 28, 1957, Magnet Cove acquired all the assets of Superbar Company.

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(b) Magnet Cove has acquired, directly or indirectly, all, or a substantial part, of the assets of certain partnerships and individuals, including those described more particularly in the following subsections (1) and (2). Such partnerships and individuals were formerly independent producers, processors, buyers or sellers of barite, but as a result of said acquisitions, their businesses or assets are now being operated by or under and subject to the control of Magnet Cove.

(1) On or about September 8, 1955, Magnet Cove acquired from J. R. Dellinger certain land in Washington County, Missouri, and a mining lease covering certain other land in the same county, which acquired and leased land contained a substantial amount of recoverable barite reserves. On or about the same day, Superbar Company acquired from J. R. Dellinger a washing plant, a magnetic separator, and certain mining equipment which had been used by J. R. Dellinger in connection with the production of barite from the land referred to hereinabove. Thereafter, Magnet Cove acquired the assets of Superbar Company as more particularly set out in subsection (a)(2) of this paragraph 7.

(2) On or about May 2, 1956, Magnet Cove acquired from Howard A. Wolf certain land in Washington County, Missouri, containing a substantial amount of recoverable barite reserves, together with a barite washing plant and barite mining equipment.

PAR. 8. The effects of the acts and practices alleged in paragraph 7 of Count I of this complaint, and things done pursuant to them, were and are, or may be, substantially to lessen competition or to tend to create a monopoly in the producing and selling of crude barite; substantially to lessen competition or to tend to create a monopoly in the buying and processing of crude barite and of crushed and ground barite, and in selling it to the well-drilling, chemical, paint and other industries; and otherwise substantially to lessen competition in prices, supply and quality of barite, and to tend to create a monopoly in the producing, processing, buying and selling of barite in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 9. The acts and practices of Dresser and Magnet Cove, as alleged in Count I of this complaint, are to the prejudice of competitors, of consumers, and of the public, and have a dangerous tendency to hinder and prevent, and have actually hindered and prevented, competition in the producing, processing, buying and selling of barite in commerce within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such com-

merce in barite and have a dangerous tendency to create in Magnet Cove a monopoly in the producing, processing, buying and selling of barite, and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

COUNT II

Charging violations of Section 7 of the Clayton Act, the Commission alleges:

Paragraphs 1, 2, 3, 4, 5, and 6: The allegations of paragraphs 1, 2, 3, 4, 5 and 6 of Count I of this complaint are incorporated herein by reference and constitute the allegations of paragraphs 1, 2, 3, 4, 5 and 6 of Count II, except that the references in paragraphs 3 and 4 of Count I to the Federal Trade Commission Act are eliminated herein, and references to the Clayton Act are substituted therefor.

PAR. 7. Canadian Industrial Minerals, Limited, is a corporation organized and existing under the laws of the Province of Nova Scotia, Dominion of Canada, with its office and principal place of business at 67 Yonge Street, Toronto, Ontario, Canada. Prior to November 1, 1955, said corporation was engaged in the production and sale of barite. For several years prior to the acquisition of its assets by Magnet Cove, said corporation sold a significant quantity of barite in commerce, as "commerce" is defined in the Clayton Act. On or about November 1, 1955, Magnet Cove acquired all the assets of Canadian Industrial Minerals, Limited.

PAR. 8. Superbar Company is a corporation organized and existing under the laws of the State of Missouri, with its office and principal place of business at Potosi, Missouri. Prior to February 28, 1957, said corporation was engaged in the producing, processing, buying and selling of barite in commerce, as "commerce" is defined in the Clayton Act. For several years prior to the acquisition of its assets by Magnet Cove, said corporation was a significant producer, processor, buyer and seller of barite. On or about February 28, 1957, Magnet Cove acquired all the assets of Superbar Company.

PAR. 9. The effects of the acts and practices alleged in paragraphs 7 and 8 of Count II of this complaint, and things done pursuant to them, were and are, or may be, substantially to lessen competition or to tend to create a monopoly in the production and selling of crude barite; substantially to lessen competition or to tend to create a monopoly in the buying and processing of crude barite and of crushed and ground barite, and in selling it to the well-drilling, chemical, paint and other industries; and otherwise substantially to

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lessen competition in prices, supply and quality of barite and to tend to create a monopoly in the producing, processing, buying and selling of barite in commerce, as "commerce" is defined in the Clayton Act.

PAR. 10. The acquisitions, acts and practices of Dresser and Magnet Cove, as alleged in Count II of this complaint, constitute violations of Section 7 of the Clayton Act.

Mr. Wilmer L. Tinley, Mr. Raymond L. Hays, Mr. John M. Siemien, Mr. Mark E. Richardson II, and Mr. Ronald A. Kronowitz, for the Commission.

McAfee, Hanning, Newcomer & Hazlett, by Mr. C. F. Taplin, Jr., Mr. William A. McAfee, and Mr. George D. Kinder, of Cleveland, Ohio, for respondents.

COMPLAINT*

The Federal Trade Commission, having reason to believe that the party named in the caption hereof and hereby made respondent herein, and hereinafter more particular designated and described, has been and is using unfair methods of competition and unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. Sec. 45), and has violated and is now violating the provisions of Section 7 of the Clayton Act (15 U.S.C. Sec. 18), and it appearing to the Commission that a proceeding by it in respect thereof would be to the interest of the public, the Commission hereby issues its complaint, charging as follows:

COUNT I

Charging violations of Section 5 of the Federal Trade Commission Act, the Commission alleges:

PARAGRAPH 1. Respondent, National Lead Company, hereinafter referred to as "respondent," is a corporation organized and existing under the laws of the State of New Jersey, with its office, and principal place of business at 111 Broadway, New York, New York.

PAR. 2. Respondent is engaged, among other things, in the production and sale of barite, a barium mineral, in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent is now, and for several years prior hereto has been, one of the two principal factors in the producing, processing, buying and selling of barite.

PAR. 3. The production and sale of barite in the United States is a highly concentrated industry of rapidly growing importance.

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In 1953 the production of crude barite in the United States amounted to approximately 920,000 short tons, and by 1956 such production had increased to approximately 1,350,000 short tons. Substantial quantities of crude barite are also imported into the United States, particularly from Canada. In 1953 total sales of crushed and ground barite in the United States amounted to approximately 920,000 short tons having a plant value of approximately \$20,400,000. By 1956 such sales had increased to approximately 1,500,000 short tons having a plant value of approximately \$41,600,000.

The largest use of barite, and one that takes more than three-fourths of the total output, is-as a weighting agent in rotary well-drilling fluids. In this use, because of its high specific gravity, low cost, and other desirable technical factors, barite does not have an economical substitute. Substantial quantities are also used as a raw material in manufacturing various barium compounds; in the production of lithopone, a white pigment used principally in paints; and in the production of glass, paint, rubber and other products.

PAR. 4. Respondent is the second largest producer of barite in the United States, and its volume of production and sales has sharply increased in the past few years. In 1953 its production of crude barite was approximately 278,000 tons, and by 1956 it had increased to approximately 422,000 tons; and in 1953 its sales of crushed and ground barite amounted to approximately \$9,700,000, and by 1956 they had increased to approximately \$15,900,000. During the same period, however, the production and sales of the company which occupies first position increased at such a rapid rate that respondent was not able to maintain first position which it occupied in 1953. Respondent's large increases in volume resulted in a small increase in its share of the total United States production of crude barite from approximately 30% in 1953, to approximately 31% in 1956, and in a decrease in its share of the total sales of crushed and ground barite from approximately 47% in 1953, to approximately 38% in 1956. The increases in the volume of production and sales of both companies during this period, however, were accompanied by substantial increases in the extent to which the industry was concentrated in them. The two companies combined accounted for approximately 54% of the production of crude barite in the United States in 1953, and approximately 63% in 1956; and they accounted for approximately 74% of the total sales of crushed and ground barite in 1953, and approximately 82% in 1956.

PAR. 5. Respondent has acquired, directly or indirectly, and continues to exercise substantial domination and control over the pro-

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ducing, processing, buying and selling of barite by certain corporations, partnerships, and individuals which were formerly substantial competitors of respondent and of others in the business of producing, processing, buying and selling barite. Said domination and control was acquired for the purpose or with the effect of lessening or eliminating, suppressing, and preventing competition with respondent by such corporations, partnerships and individuals in the producing, processing, buying and selling of barite, of lessening and suppressing competition generally in the producing, processing, buying and selling of barite, and of tending to create and maintain a monopoly in respondent. Said domination and control over the producing, processing, buying and selling of barite by such corporations, partnerships and individuals has been acquired by respondent by and through the use of the methods, acts and practices set out in the following subparagraphs (a) and (b), among others:

(a) Respondent has acquired, directly or indirectly, all, or a substantial part, of the assets of certain corporations, including those described more particularly in the following subsections (1) and (2). Such corporations were formerly independent producers, processors, buyers or sellers of barite, but, as a result of said acquisitions, their businesses or assets are now being operated by respondent or under and subject to the control of respondent.

(1) L. A. Wood, Inc., is a corporation organized and existing under the laws of the State of Tennessee, with its office and principal place of business at Sweetwater, Tennessee. Prior to May 1956 said corporation was engaged in the producing, processing and selling of barite in commerce, as "commerce" is defined in the Federal Trade Commission Act. For several years prior to the acquisition of its assets by respondent, L. A. Wood, Inc., was a significant producer, processor and seller of barite. On or about May 21, 1956, respondent acquired all the assets, except cash, accounts and notes receivable, of L. A. Wood, Inc.

(2) Barytes Mining Company is a corporation organized and existing under the laws of the State of Georgia, with its office and principal place of business at Potosi, Missouri. Prior to May 1956 said corporation was engaged in the production and sale of barite in commerce, as "commerce" is defined in the Federal Trade Commission Act. For several years prior to the acquisition of its assets by respondent, Barytes Mining Company was a significant producer of barite. On or about May 7, 1956, respondent acquired all the assets, except cash, accounts and notes receivable, of Barytes Mining Company.

(b) Respondent has acquired, directly or indirectly, all, or a substantial part, of the assets of certain partnerships and individuals, including the partnership described more particularly in the following sub-section (1). Such partnerships and individuals were formerly independent producers, processors, buyers or sellers of barite, but as a result of said acquisitions their business or assets are now being operated by or under and subject to the control of respondent.

(1) On or about June 1, 1956, respondent acquired from Finlen & Sheridan Mining Company, a partnership, whose post office address is Butte, Montana, all mineral rights and all real and personal property held or used by said partnership in the conduct of its barite business in Missoula County, Montana.

PAR. 6. The effects of the acts and practices alleged in paragraph 5 of Count I of this complaint, and things done pursuant to them, were and are, or may be, substantially to lessen competition or to tend to create a monopoly in the producing and selling of crude barite; substantially to lessen competition or to tend to create a monopoly in the buying and processing of crude barite and of crushed and ground barite, and in selling it to the well-drilling, chemical, paint, and other industries; and otherwise substantially to lessen competition in prices, supply and quality of barite, and to tend to create a monopoly in the producing, processing, buying and selling of barite in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. The acts and practices of respondent, as alleged in Count I of this complaint, are to the prejudice of competitors, of consumers, and of the public, and have a dangerous tendency to hinder and prevent, and have actually hindered and prevented, competition in the producing, processing, buying and selling of barite in commerce within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such commerce in barite and have a dangerous tendency to create in respondent a monopoly in the producing, processing, buying and selling of barite; and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

COUNT II

Charging violations of Section 7 of the Clayton Act, the Commission alleges:

Paragraphs 1, 2, 3, and 4: The allegations of paragraphs 1, 2, 3 and 4 of Count I of this complaint are incorporated herein by reference and constitute the allegations of paragraphs 1, 2, 3 and 4 of

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Count II, except that the reference in paragraph 2 of Count I to the Federal Trade Commission Act is eliminated herein, and reference to the Clayton Act is substituted therefor.

PAR. 5. L. A. Wood, Inc., is a corporation organized and existing under the laws of the State of Tennessee with its office and principal place of business at Sweetwater, Tennessee. Prior to May 1956 said corporation was engaged in the producing, processing and selling of barite in commerce, as "commerce" is defined in the Clayton Act. For several years prior to the acquisition of its assets by respondent, L. A. Wood, Inc., was a significant producer, processor and seller of barite. On or about May 21, 1956, respondent acquired all the assets, except cash, accounts and notes receivable of L. A. Wood, Inc.

PAR. 6. Barytes Mining Company is a corporation organized and existing under the laws of the State of Georgia with its office and principal place of business at Potosi, Missouri. Prior to May 1956 said corporation was engaged in the production and sale of barite in commerce, as "commerce" is defined in the Clayton Act. For several years prior to the acquisition of its assets by respondent, Barytes Mining Company was a significant producer of barite. On or about May 7, 1956, respondent acquired all of the assets, except cash, accounts and notes receivable of Barytes Mining Company.

PAR. 7. The effects of the acts and practices alleged in paragraphs 5 and 6 of Count II of this complaint, and things done pursuant to them, were and are, or may be, substantially to lessen competition or to tend to create a monopoly in the producing and selling of crude barite; substantially to lessen competition or to tend to create a monopoly in the buying and processing of crude barite and of crushed and ground barite, and in selling it to the well-drilling, chemical, paint and other industries; and otherwise substantially to lessen competition in prices, supply and quality of barite and to tend to create a monopoly in the producing, processing, buying and selling of barite in commerce, as "commerce" is defined in the Clayton Act.

PAR. 8. The acquisitions, acts and practices of respondent, as alleged in Count II of this complaint, constitute violations of Section 7 of the Clayton Act.

Mr. Wilmer L. Tinley, Mr. Raymond L. Hays, Mr. John M. Siemien, Mr. Mark E. Richardson II, and Mr. Ronald A. Kronowitz, for the Commission.

Alexander & Green by Mr. Eugene Z. DuBose, Mr. James D. Ewing, Mr. John B. Heinrich and Mr. J. Kenneth Campbell of New York, N.Y., for respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER*

I. The Complaint

1. The complaint in this proceeding was issued on March 26, 1958. It charges in the first of two counts that Magnet Cove Barium Corporation, hereinafter referred to as Magnet Cove or Magcobar, is the largest producer of barite in the United States, and that, by the purchase in 1956 of the assets of one Canadian corporation and those of one Missouri corporation, augmented by the acquisition of the assets of two individuals, acquired such additional barite resources as to give it substantial domination and control over the production, processing, buying and selling of barite, a mineral used in drilling oil wells, and that such acquisitions tended substantially to lessen competition or to create a monopoly in the sale of barite, in violation of § 5 of the Federal Trade Commission Act. The pertinent part thereof provides, as follows:

§5(a)(1) Unfair methods of competition in commerce, and unfair * * * acts or practices in commerce, are hereby declared unlawful.

The respondent, Dresser Industries, Inc., hereinafter referred to as Dresser, is charged, as the controlling stockholder of Magnet Cove, with being responsible jointly with it for the alleged acts and practices.

2. The second count of the complaint charges that Magnet Cove's acquisition of the assets of the Canadian corporation and the Missouri corporation was made in violation of § 7 of the Clayton Act, of which the pertinent part provides, as follows:

That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

II. The Answer

3. In their answer, Dresser and Magnet Cove deny substantially all of the material allegations of the complaint, except the fact of the acquisitions, and specifically deny any violation of either § 5 of the Federal Trade Commission Act or § 7 of the Clayton Act. Their answer further affirmatively alleges that the Commission has no jurisdiction over the acquisition of the assets of the Canadian cor-

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poration, and that the Canadian corporation was not engaged in commerce.

III. The Issues

4. The principal issues in this proceeding may be stated as follows:

(1) What product constitutes the line or lines of commerce here involved?

(2) What is the relevant market or "section of the country" in which we must determine the potential effect, if any, of the challenged acquisitions?

(3) Is there a reasonable probability that the acquisitions by Magnet Cove of the assets of either of the two corporations, the one located in Missouri and the one located in Canada, may have the effect of substantially lessening competition or tending to create a monopoly in violation of § 7 of the Clayton Act?

(4) Did the acquisitions by Magnet Cove of the assets of the two individuals, together with the corporate acquisitions, constitute an unfair method of competition or an unfair trade practice, in violation of § 5 of the Federal Trade Commission Act?

(5) Does the Commission have jurisdiction over the acquisition by Magnet Cove of the assets of the Canadian corporation, within the meaning of § 1 and § 7 of the Clayton Act?

IV. Hearings

5. Hearings were held at various times from 1959 to 1962, and the record thereof contains numerous exhibits and approximately 5,000 pages of testimony and other evidence.

V. Proposed Findings

6. Opposing counsel submitted proposed findings as to the facts and proposed conclusions. All proposals have been considered by the hearing examiner, and those not incorporated herein, either verbatim or in substance, are hereby rejected.

7. The proposed findings and conclusions submitted by counsel supporting the complaint required special analysis. At the prehearing conference held herein in January 1959, counsel supporting the complaint moved that this proceeding and the proceeding in Docket 7096, National Lead Company, involving similar charges, be consolidated for purposes of trial. Since the Commission had issued separate complaints in these two proceedings, alleging illegal mergers different in size and apparent significance, against different re-

spondents having different economic backgrounds and histories in the barite industry, and because of the fact that the respondents in these two proceedings were each others chief competitors, the consolidation of the two cases would, in our opinion, have been unfair to the respondents, and a joint trial inadequate to safeguard the public interest. Accordingly, the hearing examiner denied the motion for consolidation. From that denial, counsel did not appeal to the Commission.

8. On several occasions during the trial of this proceeding, counsel supporting the complaint renewed his efforts to have the two cases consolidated. All such requests were denied, for the same reasons upon which the first denial was based. Finally, in his order of January 28, 1962, designating the time for the filing of proposed findings as to the facts, the hearing examiner admonished counsel that:

Although both proceedings are concerned with mergers, and the effect thereof on commerce in the sale of barite, they are separate cases, and the evidence in each varies considerably from that in the other. These various factors require that each case be considered separately, and separately adjudicated.

In apparent disregard of the above directive, counsel supporting the complaint has submitted proposed findings in which he would have the facts in one case used to justify factual findings against the respondent in the other. For example, he states:

* * * The effects of the acquisitions by each Respondent have heightened and reinforced the effects of the acquisitions by the other.

9. The Commission in *Foremost Dairies, Inc.*, Docket 6495, and the Supreme Court in the case of *Brown Shoe Co. v. United States*, 370 U.S. 294 (1960), interpreted the mandate of § 7 of the Clayton Act to mean that a given merger is prohibited only if there is proof that the effect of that particular merger may be substantially to lessen competition or tend to create a monopoly. Therefore, in our opinion, the adoption of any proposed findings relying upon evidence in one proceeding to prove allegations in another proceeding not conjoined therewith, and not yet adjudicated, would clearly contravene the mandate of § 7 of the Clayton Act as interpreted by the Commission.

VI. Organization and Business of Respondents

10. Respondent Dresser is a corporation organized and existing under the laws of the State of Delaware, and Respondent Magnet Cove is a corporation organized and existing under the laws of the State of Arkansas. The principal office and place of business of

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Dresser is in the Republic National Bank Building, Dallas, Texas, and that of Magnet Cove is at 3133 Buffalo Speedway, Houston, Texas. Dresser owns all of the capital stock of Magnet Cove.

11. Dresser, through various subsidiaries and operating divisions, manufactures, and sells to the oil, gas and chemical industries, various products and services, including drilling-mud ingredients, well logging and perforation, drilling bits and oil-well-drilling tools, compressors, engines and turbines, centrifugal and plunger type pumps, pipe compression couplings and fittings, drilling rigs and masts, blowers and exhausters, and seismograph systems. Dresser is not engaged in the domestic barite or drilling-mud business except through the operation of its subsidiaries, Magnet Cove and Superbar Company, a new corporation organized by Dresser in 1957. Dresser functions through sixteen principal operating units. We are here concerned with only two of these, Magnet Cove and Superbar.

12. The business of Magnet Cove is the mining, processing and selling of ingredients used in the compounding of drilling mud used in the drilling of oil and gas wells. The principal mud ingredients are barite and bentonite, which Magnet Cove mines from properties held under lease or mining claims in the United States, Canada, Mexico and Greece, and which it processes at its mills in the United States, Canada and Venezuela.

VII. The Barite Industry

A. *The Product Barite*

13. Barite, the product with which we are here concerned, is the mineral barium sulphate (BaSO_4). It is found in hardrock formations, in veins, in massive deposits, and in residual deposits throughout clay or other sedimentary formations. It can be mined by various methods, including open-pit mining, underground mining, and even so-called hand mining, which is simply a pick-and-shovel method of securing surface deposits. This latter method has largely been discontinued.

14. The crude barite is generally washed to remove impurities, and then, when intended for use in oil-well drilling, is ground to the fineness of powder. The most common specification for such grinding requires that 90% of the barite must pass through a sieve having 325 holes to the square inch. This grinding process may take place at a grinding mill where the product is mined, but more commonly is done at a grinding mill in the geographical area where the barite is to be used.

15. Barite has a variety of uses. In the past it has been used as a filler in paint, rubber, linoleum, and other products. Although some barite is still used for such purposes, in these uses it has largely been displaced by other substances. It is used today in the manufacture of barium chemicals and as a fluxing agent in the manufacture of glass. Most barite, however, is used in the composition of oil-well-drilling muds. During the years 1954 through 1958, approximately 95% of all barite sold in the United States for all purposes was ground barite for use in oil-well drilling.

16. There are three principal grades of barite: drilling-mud barite, chemical barite, and glass barite. Drilling-mud barite, which is ground barite, must have a barium-sulphate content of from 90% to 92%, with a specific gravity of not less than 4.2 and an iron content of not more than 5%, and should be relatively free of soluble salts. Chemical barite must be in lump form, with at least a 94% barium-sulphate content, and less than 1% of iron. Glass-grade barite must be at least 95% barium sulphate, with an iron content of less than 0.3%.

B. The Function of Barite in Drilling Mud

17. In drilling an oil well today, a variety of materials is mixed at the drilling rig to form what is known as drilling mud. This mixture is pumped into the well and circulated therein during the drilling operations. The drilling mud acts as a lubricant, cools the drill bit, and aids in carrying off the solids torn loose by the bit and in sealing the area drilled through so that the circulating mud will not be lost into adjacent areas. The function of ground barite in the drilling mud is to increase the specific gravity thereof so that it will exert sufficient hydraulic pressure during the drilling operations to control and offset the contravening pressures in the well formation, caused by gas, salt water and oil. Approximately thirty years ago, before barite was used as a weighting agent in drilling mud, "blow-outs" and other expensive damage to the drilling rig and oil-bearing property were of much more frequent occurrence than they are now.

C. Beginning of the Barite Industry

18. The barite drilling-mud industry had its origin in the pioneering experiments with barite as a drilling-mud ingredient in the early 1920s. In 1926 the use of barite in oil-well-drilling mud was sufficiently perfected so that the so-called Stroud Patent was issued thereon to the National Pigment and Chemical Company, a subsid-

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iary of National Lead Company. During the life of this patent, National, as the owner of the patent, had a legal monopoly on the use of barite as an ingredient of oil-well-drilling mud. National granted licensees under the Stroud Patent the right to use barite in oil-well-drilling mud on the payment of a fee of \$13 per ton for all barite so used. By 1940, while National still enjoyed the protection of the Stroud Patent, National's own sales of ground barite for oil-well-drilling purposes amounted to 85.5% of the total sales of ground barite for that purpose in the domestic market. In 1943 the Stroud Patent expired.

19. Three years before the expiration of the patent, Magnet Cove was incorporated in the State of Arkansas, with a capital stock of \$25,000, for the purpose of mining barite at Malvern, Arkansas. In 1943, Magnet Cove began the sale of bentonite in addition to barite to the oil-well-drilling industry, and shortly thereafter it began the sale of all chemicals used in the drilling-mud industry. In 1946, Magnet Cove began to purchase barite in Missouri, from Eversole-McClay Company, which operated mines and also small washing plants there.

20. On November 1, 1949, Dresser acquired by purchase all the stock of Magnet Cove. This purchase was made because Dresser was already engaged in selling to the oil industry, and because the officials of Dresser believed that the oil-well-drilling companies would soon be engaged in extensive deep-well drilling, and there would be an increased demand for barite. In 1954 the sales of barite by Magnet Cove, operating as a subsidiary of Dresser, amounted to 46.37% of the market, exceeding the 40.72% market share held that year by National Lead Company, Dresser's foremost competitor.

D. Reserves of Barite

21. Respondents introduced in evidence a geological survey made in 1958 by the United States Department of the Interior, which estimated the "demonstrated" and "inferred" reserves of barite ore throughout the United States. The demonstrated reserves were defined as those that can be readily exploited under present technological and economic conditions. Inferred reserves are defined as the potential amount of ore that must await favorable economic conditions or new techniques of mining. According to that survey, the total reserves of barite in the United States were estimated to be approximately 650,000,000 short tons, of which 285,000,000 were demonstrated reserves, and 365,000,000 were inferred reserves. The same survey estimated the reserves in the State of Missouri as

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amounting to more than 30,000,000 short tons, consisting of 20,000,000 demonstrated, and in excess of 10,000,000 inferred reserves. The estimate for the State of Arkansas was 27,600,000 short tons, consisting of 9,600,000 demonstrated and 18,000,000 inferred reserves. The estimate for Georgia, Tennessee, North Carolina and South Carolina was 29,100,000 short tons, consisting of 9,600,000 demonstrated and 19,500,000 inferred reserves.

22. Respondents also placed in evidence, in connection with the testimony of Dr. Garrett A. Muilenburg, a consulting geologist, a report by him covering an investigation of the barite reserves of Washington, Jefferson, and St. Francois Counties of Missouri. This report contains an analysis of the barite reserves of these counties, as follows:

	<i>Acreage</i>	<i>Tons of barite ore</i>
Independent operators.....	22, 009	5, 281, 920
National, Magnet Cove, and Milwhite Mud, the three largest operators in the industry.....	52, 970	12, 713, 040
Open land, not owned nor controlled by any present barite-producing company or individual.....	38, 599	9, 326, 880
Totals.....	113, 578	27, 321, 840

E. Imports of Barite

23. According to the record, during the period from 1954 through 1958, crude barite ore was supplied to the Gulf Coast area from Mexico, Canada, Greece, Yugoslavia, Peru, Italy and, more recently, Spain and Morocco. The Commission's survey shows foreign ore receipts at Gulf Coast grinding plants as follows:

	<i>Tons</i>
1954.....	295, 200
1955.....	333, 463
1956.....	552, 213
1957.....	822, 657

24. In 1958, when well-drilling and barite sales declined generally, the receipts of foreign ore, for well-drilling purposes only, at Gulf Coast grinding plants also declined, to 529,857 tons, which, however, still slightly exceeded the total domestic production of 515,520 tons for all uses in all areas in the United States.

25. The Milwhite Mud Company, hereinafter referred to as Milwhite, a grinder of barite which, during the survey period of 1954 through 1958, cured and ground as much as 98,000 tons of barite in a single year, received most of such barite from foreign sources. Counsel supporting the complaint has stated that this company,

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the third-largest engaged in the mud business, "* * * must rely almost wholly on the caprices of import". But Witness Max Miller, president of Milwhite, testified that his reason for relying so heavily on foreign barite ore was as follows:

It can be secured cheaper on a world market. That is, it can be delivered to the ultimate point of use cheaper in buying from the world market than it can from mining any reserves in this country that we know about.

26. Witness Eversole of the Milwhite Mud Company explained that the importation of foreign ore adversely affected and depressed the demand for Missouri ore. When he testified in 1960, his estimate was that foreign ore processed in the Gulf Coast area was being supplied in that area at a cost of from \$2.50 to \$4.00 per ton less than the laydown cost of Missouri ore.

VIII. The Challenged Acquisitions

A. C.I.M.

27. On November 1, 1955, Magnet Cove purchased for \$4,857,000 all of the assets of Canadian Industrial Minerals, Ltd., hereinafter referred to as C.I.M. Among the assets acquired were cash, bonds, receivables and inventory in the amount of \$1,170,000. The principal assets acquired, consisting of a 20-to-80 year mineral sublease from the Provincial Government, a washing and grinding plant, machinery, and a loading dock in Hants County, near Walton, Nova Scotia, were purchased for \$3,687,000. C.I.M. was a corporation organized and existing under the laws of the Province of Nova Scotia, Canada, and was a whollyowned subsidiary of Barymin Company, Ltd., a Canadian corporation with its principal place of business at 67 Young Street, Toronto, Ontario, Canada.

28. Prior to the acquisition, C.I.M. was engaged in the business of producing and selling barite from its leased property. In 1953 Magnet Cove became its chief purchaser of crude barite, and from that time until the acquisition in 1955, the amount of barite sold to Magnet Cove and other purchasers in the United States by C.I.M. was as follows:

	Purchases of crude barite from C.I.M. (gross tons)		
	1953	1954	1955
By Magnet Cove.....	41, 770. 30	105, 238. 27	80, 864. 87
By all United States customers for grinding and resale to the oil-well-drilling industry.....	128, 755. 57	129, 198. 35	101, 307. 75

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29. Prior to the acquisition in 1955, the barite reserves of C.I.M. were estimated to be 2,055,716 tons.

30. At the time of the acquisition, C.I.M. had contracts for the supplying of crude barite to Milwhite, Barium Reduction Corporation, and Magnet Cove. The contract between C.I.M. and Milwhite was fulfilled by Magnet Cove through Barymin Company, Ltd., and Barymin Exportation, Ltd. Magnet Cove attempted also to carry out a contract between C.I.M. and Barium Reduction Corporation for the sale of chemical-grade barite, but was unable to do so because its supply of chemical-grade barite had been exhausted.

31. The contracts between C.I.M. and Milwhite, C.I.M. and Barium Reduction Corporation, and C.I.M. and Magnet Cove provided that title to the crude barite should pass to the purchaser upon delivery of the material to the ship at the loading dock in Nova Scotia.

B. The Old Superbar Acquisition

32. On February 28, 1957, Magnet Cove acquired by purchase the assets of the Superbar Company, a corporation organized and existing under the laws of the State of Missouri, with its office and principal place of business at Potosi, Missouri. The assets acquired by Magnet Cove included mineral rights, leases, and lands in Washington, Jefferson and St. Francois Counties, Missouri, with an estimated barite reserve of 2,600,000 tons. Subsequently, a new estimate increased the probable reserves to 2,820,287 tons. In addition, the properties included five barite washing plants, one barite grinding mill, one barite beneficiation mill, and all the tangible and intangible assets of Superbar Company, including its trade name, business, and goodwill.

33. At the time of acquisition, Superbar had one-year contracts with twelve glass companies, each contract being for the delivery of 5,000 tons of glass-grade barite. In addition, there was a one-year contract ending August 31, 1957, with Barium Reduction Corporation, for approximately 2,500 tons of chemical-grade barite per month. Also, at the time of the acquisition Superbar was supplying ground barite for oil-well-drilling purposes to Magnet Cove in substantial quantities. At that time, Superbar had not been a competitor of Magnet Cove because it sold only to corporations who resold the barite for oil-well-drilling use, but did not sell to purchasers who were end users of barite in the oil-well-drilling industry.

34. Later Superbar (hereinafter sometimes referred to as Old Superbar) was dissolved, and a new sales organization, subsidiary to Magnet Cove, was created under the name of Superbar (sometimes

hereinafter referred to as New Superbar) for the purpose of selling barite to end users in the oil-well-drilling industry to whom Magnet Cove did not sell directly.

35. Magnet Cove purchased Old Superbar because it was estimated that in order to produce 100,000 tons of barite per year from the barite properties which Magnet Cove already owned and leased in Missouri in the same general area as the Superbar properties, it would be necessary to construct five washing plants at a minimum cost of \$500,000, and to purchase additional mining equipment at an estimated cost of \$1,000,000. Magnet Cove believed that the mining equipment acquired from Old Superbar could be used to recover approximately 1,000,000 tons of barite from properties already controlled by Magnet Cove, without this additional investment in washing plants and other equipment. Also, it was thought more feasible by Dresser's management to purchase reserves of barite from Old Superbar than to purchase ground barite from other producers.

C. The Dellinger Acquisition

36. On September 8, 1955, Magnet Cove acquired from J. R. Dellinger, an individual hereinafter referred to as Dellinger, 1,276.62 acres of land in Washington County, Missouri, together with a mining lease covering other land in the same county. It was estimated that the probable barite reserve underlying the land acquired from Dellinger was approximately 30,000 tons at the time of purchase, and recoverable reserves underlying the leased property were approximately 13,000 tons. Prior to the acquisition Dellinger sold almost his entire production of barite to customers in the glass and chemical industries. Just prior to the acquisition, however, Dellinger had transferred his customers to Old Superbar because the type of barite which he was able to produce was unsuitable for use in these two industries. His production of crude ore in 1954 was 11,358 tons.

37. Prior to the acquisition, Dellinger was engaged in interstate commerce.

D. The Wolf Acquisition

38. On May 2, 1956, Magnet Cove purchased from Howard A. Wolf, an individual hereinafter referred to as Wolf, 534.44 acres of land in Washington County, Missouri, together with a barite washing plant and miscellaneous barite mining equipment. The capacity of the washing plant so acquired was approximately 500 tons of barite per month. At the time of the acquisition, it was estimated that the recoverable barite reserves underlying the land so

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acquired were approximately 120,000 tons. In 1958 this estimate was revised to indicate a reserve of only 114,562 tons. Prior to the acquisition, Wolf's production had been as follows:

	Tons
1954.....	6, 538
1955.....	6, 382
1956, first six months.....	1, 733

39. The barite produced from the Wolf properties was ground at the grinding plant at Mineral Point, Missouri, which Magnet Cove acquired from Old Superbar.

40. Prior to the acquisition, Wolf was engaged in interstate commerce.

IX. The Relevant Market

41. In its recent decision in the *Brown Shoe* case, *supra*, the Supreme Court prescribed a formula for determining the "line of commerce", as meant by § 7 of the Clayton Act, which may be adversely affected by a merger. According to that formula, the "line of commerce", or, as expressed by the Court, the "product market",

* * * may be determined by examining such practical indicia as industry or public recognition of the submarket as a separate economic entity, the product's peculiar characteristics and uses, unique production facilities, distinct customers, distinct prices, sensitivity to price changes, and specialized vendors.

42. The Supreme Court, likewise, prescribed a formula for determining the "section of the country" or "geographic market" within the meaning of § 7 of the Clayton Act, as follows:

The criteria to be used in determining the appropriate geographic market are essentially similar to those used to determine the relevant product market. * * * The geographic market selected must, therefore, both "correspond to the commercial realities" of the industry and be economically significant. Thus, although the geographic market in some instances may encompass the entire Nation, under other circumstances it may be as small as a single metropolitan area.

Such commercial realities should include, we believe, all the factors affecting the distribution and sale of the relevant product.

43. In the conduct of its survey of the barite industry and markets, the Commission's staff assembled figures with respect to the sale of barite for a number of end uses. The companies responding to the survey were asked to segregate their sales of barite to oil-well-drilling companies who use only ground barite; their sales to barium chemical manufacturers who use principally crude barite; their sales to glass manufacturers who use principally crushed barite in a size between crude and ground; their sales to lithopone manu-

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facturers who use principally crude barite; and their sales to "other users", including crude, crushed and ground barite.

44. The evidence establishes that during the years 1954 through 1958 the sale of ground barite for oil-well-drilling uses represented between 84.4% and 87.7% of all barite in all forms sold in the United States for all purposes.

45. In assembling its statistics on the sale of ground barite for oil-well-drilling uses, the Commission's staff divided the continental United States into five geographical areas designated as the Gulf Coast area, the Mid-Continent area, the Rocky Mountain area, the West Coast area, and the "Other States" area, and called upon the responding companies to segregate the area in which their sales of ground barite for oil-well-drilling use were made. The Gulf Coast area was defined, for the Commission's survey purposes, as including the States of Florida, Georgia, Alabama, Mississippi, Louisiana and Texas, except the northern part of Texas and the drillings off-shore from the States named.

46. From all the evidence there emerges the fact that ground barite is an exceptionally important item in the drilling-mud industry in the Gulf Coast area, where geologic conditions produce high-pressure areas requiring the use of large amounts of barite to counteract those pressures in drilling operations. In the Mid-Continent area, the pressures encountered in well-drilling are relatively low, and the use of barite in that area is therefore only a minor factor.

47. The Commission's survey establishes that sales of ground barite to end users for oil-well drilling, for the period from 1954 through 1958, were distributed as follows:

Percent of Total of U.S. Sales Attributable to Area

Area	1954	1955	1956	1957	1958
Gulf Coast.....	88.12	90.398	92.356	88.443	87.293
Mid-Continent.....	2.80	2.235	1.934	4.982	4.558
Rocky Mountain.....	2.89	1.893	1.913	2.711	2.870
West Coast.....	5.93	5.406	3.753	3.801	5.155
Other States.....	.26	.068	.044	.063	.124
Total.....	100.00	100.000	100.000	100.000	100.000

48. The evidence shows that the respondents herein and their leading competitor, National Lead Company, are, and for many years have been, the two foremost sellers of ground barite for oil-well-drilling purposes in the United States, and that in the years 1956, 1957 and 1958, they sold between 93% and 95% of their production of such product in the area along the Gulf Coasts of Louisiana and Texas.

49. There is some evidence in the record relevant to the sale of barite for other purposes than that of oil-well drilling, but such evidence is not of sufficient economic importance to be significant in this proceeding.

50. The evidence shows further that the production and sale of ground barite for oil-well-drilling purposes constitutes in itself a separate, specialized business; that barite ground for oil-well-drilling purposes must have certain characteristics, both as to chemical content and as to size of grind, peculiar to itself; that the product is sold to a distinct class of customers, and at a price depending upon services rendered, as well as quality of product and other factors. We must conclude, therefore, that the sale of ground barite to end users for oil-well-drilling purposes constitutes the appropriate "product market" for the purpose of evaluating the possible effect of the acquisitions involved in this proceeding.

51. Furthermore, as concerns the "geographical market" or "section of the country", we must conclude that, since from 87% to 90% of all ground barite for oil-well-drilling purposes is distributed in the Gulf Coast area, and since that is the area wherein the respondents herein and their leading competitor sold from 93% to 95% of the "line of commerce" in question, the Gulf Coast area is the relevant market economically significant in this proceeding.

52. Counsel supporting the complaint, in his proposed findings as to the facts, does not define "line of commerce" or "section of the country"; yet he asserts, correctly, that barite is used principally in oil-well drilling, barium chemical manufacturing, lithopone manufacturing, and glass manufacturing. Apparently he considers all four uses of barium as constituting four separate lines of commerce relevant herein. He also states that barite for oil-well-drilling purposes is sold in Gulf Coast, Mid-Continent, Rocky Mountain, West Coast and other areas. This would seem to indicate that he considers the entire United States as the relevant market for oil-well-drilling purposes. In connection with such contentions, we must observe that not a single customer or purchaser of barite for any use other than oil-well-drilling purposes was brought to the witness-stand in this proceeding. Furthermore, as far as the oil-well-drilling industry is concerned, almost all the testimony relates to the production and sale of ground barite for oil-well-drilling purposes in the Gulf Coast area. At only one hearing, held in Oklahoma City, Oklahoma, was any testimony heard from witnesses who sold ground barite outside the Gulf Coast area. There, three witnesses gave some testimony concerning their operations in the so-called "Mid-Continent" area, which was, in substance, to the effect that

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barite was an unimportant, low-volume, low-profit item in the territory where they did business. Moreover, the statistics in the Commission's survey show that total sales of ground barite for oil-well-drilling purposes in the Mid-Continent, Rocky Mountain, West Coast and "Other States" areas were not "economically significant" within the rule of relevancy laid down in the *Brown Shoe* case, *supra*.

X. The Effect of the Challenged Acquisitions
on the Sale of Barite in the Relevant Market

A. C.I.M.

53. The only customers in the United States who purchased crude barite from C.I.M. for oil-well-drilling purposes in the year prior to its acquisition by Magnet Cove were Milwhite and Magnet Cove. The record shows that Milwhite found other adequate sources of crude ore, both foreign and domestic, at satisfactory prices, immediately following the acquisition in question, and continued to compete as before, and even substantially to increase its share of the relevant market.

54. The record also shows that the grinding plants located in the relevant market area have, in the years following the acquisition of C.I.M. by Magnet Cove, received more than an adequate supply of crude barite, so that a considerable stockpile has been built up. All ore for oil-well-drilling purposes produced by the C.I.M. plant, both before and after its acquisition by Magnet Cove, has always been shipped to the Gulf Coast area. Accordingly, we must conclude that the acquisition of the assets of C.I.M. by Magnet Cove did not have any adverse effect upon the supply of crude barite to grinding plants capable of serving the relevant market. C.I.M. was never a competitor of Magnet Cove, and there is no evidence to warrant the assumption that it was ever a potential competitor.

B. *Old Superbar*

55. Prior to Magnet Cove's acquisition of Old Superbar in 1957, it was not in competition with Magnet Cove in the sale of barite to end users in the oil-well-drilling industry. The record shows that Old Superbar sold barite to only three customers engaged in the sale of ground barite to that industry, namely, Magnet Cove, Milwhite, and Bass Sales Company. In 1956 approximately 90% of Old Superbar's production was sold to those three customers, in amounts as follows:

	Tons
Bass Sales Company.....	3,700
Milwhite.....	21,555
Magnet Cove.....	67,957

The remaining 10% of Old Superbar's production was sold for uses other than that of oil-well drilling.

56. The testimony of E. D. Schultz indicates that the Bass Sales Company had suffered a net loss in 1956, and was being operated by a creditors' committee in early 1957. Under these circumstances, its going out of business in 1957 cannot be attributed to the acquisition in question.

57. The evidence shows that Milwhite had other sources of supply so abundant that the effect of the acquisition upon its business was negligible. Moreover, the record shows that there was an ample supply of ground barite available in the relevant market, and that sellers of that product, other than respondents herein and National Lead, materially increased their respective shares of the market in the years immediately following the acquisition. The record clearly shows keener competition existing in the sale of ground barite to oil-well-drilling companies in the relevant market since the acquisition, than before it.

C. J. R. Dellinger

58. The property acquired by Magnet Cove from J. R. Dellinger on September 18, 1955, contained in all an estimated 43,000 tons of crude barite reserve. Before the acquisition, Dellinger sold relatively small quantities of barite to National Lead and to Old Superbar. The acquisition of the Dellinger property is of such relative unimportance as scarcely to warrant comment. Mr. Dellinger now holds newly-discovered barite reserves of substantial importance in Georgia.

D. H. A. Wolf

59. The property acquired from H. A. Wolf consists of a barite washing plant and barite reserves of 120,000 tons. The total barite production from the Wolf property during the two years before its acquisition by Magnet Cove was 6,538 tons in 1954 and 6,382 tons in 1955. In 1954, all of its sales were to National Lead, Superbar and Milwhite. Thus the only customers of Wolf for barite to be used ultimately in oil-well drilling were National, Superbar, and Milwhite, and the record shows that no source of supply of crude or ground barite was in fact denied to independent mud companies by reason of the challenged acquisition.

E. General Discussion

60. The substantial changes in the market shares held by respondents and their competitors during the period 1954 through

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1958, based upon the Commission's survey, are graphically portrayed by the following tabulation:

	1954	1955	1956	1957	1958
Magnet Cove Barium Corporation.....	<i>Percent</i> 46.37	<i>Percent</i> 47.28	<i>Percent</i> 46.93	<i>Percent</i> 46.05	<i>Percent</i> 44.71
National.....	40.72	35.94	36.65	36.86	33.39
Milwhite Mud.....	10.40	14.74	14.27	14.32	17.01
All others.....	2.51	2.04	2.15	2.77	4.89
	100.00	100.00	100.00	100.00	100.00

61. At the request of counsel for respondents, subpoenas were issued and served in January, 1962, on all the companies other than National and Dresser Industries which were known to be selling ground barite for oil-well-drilling purposes in the Texas and Louisiana Gulf Coast areas. Thereafter, pursuant to agreement between counsel, stipulated testimony was received concerning the production of barite for the years 1959 through 1961, subsequent to the Commission's survey. Based upon this testimony, and upon exhibits showing the sales of National and Dresser Industries in the two areas mentioned, an analysis of the competitive trend in the relevant market subsequent to the Commission's survey reveals that the two oldest sellers of ground barite, National and Magnet Cove, have declined steadily from 1959, and now hold considerably less than the respective market shares they held in the Gulf Coast area as a whole prior to the challenged acquisitions; while the market share of the relatively new independent organizations in the Texas and Louisiana segment of the relevant market has increased more than threefold, from slightly over 6% in 1959 to 20.6% in 1961, as follows:

	1959	1960	1961
Magnet Cove Barium Corp. (including Superbar Co., Superbar Mud Sales, Inc., and Gillen Oil Field Service, Inc.).....	<i>Percent</i> 43.250	<i>Percent</i> 35.630	<i>Percent</i> 31.657
National Lead Company.....	29.392	29.223	28.025
Milwhite Mud Sales Co.....	21.232	21.560	19.704
Independent mud companies.....	6.126	13.587	20.614
	100.000	100.000	100.000

62. The following tabulation illustrates the changes in market shares which have taken place from 1954 to 1961:

	Entire Gulf Coast area			Louisiana-Texas segment of Gulf Coast area—1961
	1954	1956	1958	
	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
National.....	40.72	36.65	33.39	28.03
Magnet Cove (Magcobar).....	46.37	46.93	44.71	31.66
Milwhite Mud.....	10.40	14.27	17.01	19.70
Independent mud companies.....	2.51	2.15	4.89	20.61

63. Counsel supporting the complaint, in his proposed findings, has presented the facts relative to the respondents' changing share of the market from 1954 through 1958 in a series of tabulations purporting to show that prior to the acquisitions in question and the restriction by Magnet Cove of its consignment distributorships, Magnet Cove's share of the market for ground barite sold to oil-well drillers was nil, and that from 1957 through 1958, Magnet Cove's share of the market rose steadily and substantially. Counsel appears to have reached this conclusion by treating the sales made by Magnet Cove's "consignment dealers" as sales made by independent competitors. Since the evidence clearly shows that Magnet Cove's consignment dealers were agents selling barite for and on behalf of Magnet Cove, never taking title thereto themselves, the conclusion proposed by counsel supporting the complaint is completely unrealistic.

64. It should be here observed that we are not now considering the justice or injustice of any hardship which may have been worked upon such dealers by the restriction of their employment as consignment dealers by Magnet Cove. Those who gave up their dealership were not, however, denied access to an adequate supply of barite; they could, and several did, elect to continue purchasing barite from Magnet Cove and from other sources, but as independent operators instead of as Magnet Cove's agents. In fact, far from restraining competition, Magnet Cove's restriction of its consignment dealerships actually created new potential competitors for itself.

XI. Changes in Competitive Techniques Since the Acquisitions

65. Respondents have always followed the practice of selling barite at a price which included both the barite sold and a technical engineering service to aid the well-driller in the efficient use of barite. Following the price reduction by Baroid in May 1958, competitive price concessions have not only continued, but have taken various forms. These price concessions include list prices

lower than Baroid's prices; discounts of from 5% to 10% off list prices; free delivery; discounts up to 15% on sales of barite without engineering service; and additional discounts based upon volume. Of all these practices, the one of selling barite without engineering service seems to have become the most prevalent.

XII. Conclusions

66. The record contains, as we have observed, not only statistics reflecting the market shares of the respective members of the industry, "the primary index of market power", but also evidence of " * * * its structure, history and probable future, * * *" which, together, constitute all the necessary factors " * * * for judging the probable anticompetitive effect to the merger".*

67. We have definitive evidence showing the actual market trend for almost five years immediately following the challenged acquisitions. The evidence shows clearly that the supply of domestic and imported crude barite was more than adequate to supply grinders serving the relevant market. The acquisitions by the respondents of the reserves of Old Superbar and those of Dellinger and Wolf constitute a very small fraction of the total demonstrated and inferred domestic barite reserves available to all purchasers in the relevant market. Moreover, evidence in the record proves conclusively that there exists an ample supply of imported crude barite available at a lower cost than domestic barite to grinders serving the relevant market.

68. Since the acquisitions, a number of new producers of crude barite, conveniently located to serve the relevant market, have availed themselves of the opportunity to enter it. Likewise, a substantial number of new grinders of barite, with a capacity greatly exceeding the current demand for their product, have also entered the relevant market. Clearly, therefore, the acquisitions here in question conferred upon respondents no substantial power to control prices, production, or sales of barite. On the contrary, the record indicates that price competition has grown keener each year since such acquisitions; the production and sales of barite by Magnet Cove's new competitors have increased substantially; and Magnet Cove's customers, particularly the large oil companies, have been buying more and more of their requirements of barite from such new competitors. In consequence, Magnet Cove's sales and share of the market have materially declined, and those of its competitors have proportionately increased.

* Footnote 38, *Brown Shoe* opinion, *supra*.

69. We must conclude, therefore, that the acquisitions in question have not tended substantially to lessen competition or to create a monopoly in the barite oil-well-drilling industry, and that there is no reasonable probability that they will have such an effect in the future. It follows that the challenged acquisitions have not resulted in any violation of either § 7 of the Clayton Act or § 5 of the Federal Trade Commission Act. Accordingly,

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER*

I. The Complaint

1. The complaint in this proceeding, issued on March 26, 1958, charges in the first of two counts that National Lead Company, hereinafter referred to as National, by the purchase in 1956 of the assets of two corporations and those of a partnership acquired substantial domination and control over the production, processing, buying and selling of barite, a mineral used in drilling oil wells, and that such acquisitions tended substantially to lessen competition or to create a monopoly in the sale of barite, in violation of § 5 of the Federal Trade Commission Act. The pertinent part thereof provides, as follows:

§ 5(a)(1) Unfair methods of competition in commerce, and unfair * * * acts or practices in commerce, are hereby declared unlawful.

2. In the second count, the complaint charges that National's acquisition of the two corporations was made in violation of § 7 of the Clayton Act, of which the pertinent part provides, as follows:

That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

II. The Answer

3. In its answer, National denies substantially all of the material allegations of the complaint, except the fact of the acquisitions, and specifically denies any violation of either § 5 of the Federal Trade Commission Act or § 7 of the Clayton Act.

* Docket No. 7096.

III. Motions to Dismiss The Complaint

4. At the completion of the case-in-chief, counsel for respondent moved that the complaint herein be dismissed, contending that a *prima facie* case had not been established. Ruling on this motion was deferred until the issuance of the initial decision herein. After the presentation of rebuttal evidence, respondent renewed its motion on substantially the same grounds. The hearing examiner again deferred his ruling thereon until the issuance of this initial decision.

IV. The Issues

5. The principal issues progressively arising from the pleading and the provisions of the law invoked in the complaint may be stated as follows:

(1) What product constitutes the line or lines of commerce here involved?

(2) What is the relevant "section of the country" wherein competition in the sale of the product in question may be lessened as a result of the acquisitions herein challenged?

(3) Has the acquisition by respondent of the assets of the two corporations and the partnership here involved hindered and prevented competition, or is there a reasonable probability that it will restrain competition in the buying and selling of barite in commerce, and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of § 5 of the Federal Trade Commission Act?

(4) Is there a reasonable probability that respondent's acquisition of the two corporations here involved may have the effect of substantially lessening competition or of tending to create a monopoly in the production and sale of barite, in violation of § 7 of the Clayton Act?

V. Hearings

6. Hearings were held at various places from 1959 to 1962, and the record thereof contains numerous exhibits and approximately 5,000 pages of testimony and other evidence.

VI. Proposed Findings

7. Opposing counsel submitted proposed findings as to the facts and proposed conclusions. All proposals have been considered by the hearing examiner, and those not incorporated herein, either verbatim or in substance, are hereby rejected.

8. The proposed findings and conclusions submitted by counsel supporting the complaint required special analysis. At the pre-hearing conference held herein in January 1959, counsel supporting the complaint moved that this proceeding and the proceeding in Docket 7095, *Dresser Industries, Inc., et al.*, involving similar charges, be consolidated for purposes of trial. Since the Commission had issued separate complaints in these two proceedings, alleging illegal mergers different in size and apparent significance, against different respondents having different economic backgrounds and histories, in the barite industry, and because of the fact that the respondents in the two proceedings were each other's chief competitors, the consolidation of the two cases would, in our opinion, have been unfair to the respondents, and a joint trial inadequate to safeguard the public interest. Accordingly, the hearing examiner, in the course of justice, denied the motion for consolidation. From that denial, counsel did not appeal to the Commission.

9. On several occasions during the trial of this proceeding, counsel supporting the complaint renewed his efforts to have the two cases consolidated. All such requests were denied, for the same reasons upon which the first denial was based. Finally, in his order of January 28, 1962, designating the time for the filing of proposed findings as to the facts, the hearing examiner admonished counsel that:

Although both proceedings are concerned with mergers, and the effect thereof on commerce in the sale of barite, they are separate cases, and the evidence in each varies considerably from that in the other. These various factors require that each case be considered separately, and separately adjudicated.

In apparent disregard of the above directive, counsel supporting the complaint has submitted proposed findings in which he makes a further effort to consolidate the two cases and have issued one order, using the facts in one case to justify factual findings against the respondents in the other. For example, he states:

* * * The effects of the acquisitions by each Respondent have heightened and reinforced the effects of the acquisitions by the other.

10. The Commission in *Foremost Dairies, Inc.*, Docket 6495, and the Supreme Court in *Brown Shoe Co. v. United States*, 370 U. S. 294 (1960), interpreted the mandate of § 7 of the Clayton Act to mean that a given merger is prohibited only if there is proof that the effect of that particular merger may be substantially to lessen competition or tend to create a monopoly. Therefore, in our opinion, the adoption of any proposed findings, relying upon evidence in one proceeding to prove allegations in another pro-

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ceeding not conjoined therewith, and not yet adjudicated, would clearly contravene the mandate of § 7 of the Clayton Act as interpreted by the Commission.

VII. Organization and Business of National

11. Respondent National was organized as a New Jersey corporation on December 8, 1891. At that time its principal business was the manufacture of white lead, linseed oil and kindred products. During the years it has become more and more diversified, until at the present time National manufactures over two hundred types of chemicals, metals and other products, which it sells to a number of industries, including railroads, automobiles, aircraft, electronics, paint, paper, plastics, furniture, construction, rubber, glass, chemicals and petroleum.

12. The Baroid Division of National produces and sells principally oil-well-drilling mud and other materials, including barite. Over the years from 1954 to 1958, the sales of the Baroid Division represented from 9% to 12% of the total consolidated sales of National. The net sales, net income, and total assets of National and its consolidated subsidiaries for the years 1950, 1956 and 1958 were as follows:

	1950	1956	1958
Net sales	\$342,700,000	\$576,300,000	\$457,600,000
Net income	26,500,000	63,150,000	44,700,000
Total assets	211,700,000	353,200,000	361,200,000

13. National's present office and principal place of business is located at 111 Broadway, New York, New York.

VIII. The Product Barite

14. Barite, the product with which we are here concerned, is the mineral barium sulphate (BaSO_4). It is found in hardrock formations, in veins, in massive deposits, and in residual deposits throughout clay or other sedimentary formations. It can be mined by various methods, including open-pit mining, underground mining, and even so-called hand mining, which is simply a pick-and-shovel method of securing surface deposits. This latter method has largely been discontinued.

15. The crude barite is generally washed to remove impurities, and then, when intended for use in oil-well drilling, is ground to

the fineness of powder. The most common specification for such grinding requires that 90% of the barite must pass through a sieve having 325 holes to the square inch. This grinding process may take place at a grinding mill where the product is mined, but more commonly is done at a grinding mill in the geographical area where the barite is to be used.

16. Barite has a variety of uses. In the past it has been used as a filler in paint, rubber, linoleum, and other products. Although some barite is still used for such purposes, in these uses it has largely been displaced by other substances. It is used today in the manufacture of barium chemicals and as a fluxing agent in the manufacture of glass. Most barite, however, is used in the composition of oil-well-drilling muds. During the years 1954 through 1958, approximately 95% of all barite sold in the United States for all purposes was ground barite for use in oil-well drilling.

17. There are three principal grades of barite: drilling-mud barite, chemical barite, and glass barite. Drilling-mud barite, which is ground barite, must have a barium-sulphate content of from 90% to 92%, with a specific gravity of not less than 4.2, and an iron content of not more than 5%; and it should be relatively free of soluble salts. Chemical barite must be in lump form, with at least a 94% barium-sulphate content, and less than 1% of iron. Glass-grade barite must be at least 95% barium sulphate, with an iron content of less than 0.3%.

IX. The Drilling-Mud Industry and National's History Therein

18. In drilling an oil well today, a variety of materials is mixed at the drilling rig to form what is known as drilling mud. This mixture is pumped into the well and circulated therein during the drilling operations. The drilling mud acts as a lubricant, cools the drill bit, and aids in carrying off the solids torn loose by the bit, and in sealing the area drilled through so that the circulating mud will not be lost into adjacent areas. The function of ground barite in the drilling mud is to increase the specific gravity thereof so that it will exert sufficient hydraulic pressure during the drilling operations to control and offset the contravening pressures in the well formation, caused by gas, salt water and oil. Approximately 30 years ago, before barite was used as a weighting agent in drilling mud, "blow-outs" and other expensive damage to the drilling rig and oil-bearing property were of much more frequent occurrence than they are now.

19. National first acquired an interest in barite in 1923, when it purchased all of the stock of National Pigments & Chemical Com-

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pany of St. Louis, Missouri. This purchase was made in order to secure a permanent supply of barite for National's subsidiary, Titanium Pigment Company, which used barite for purposes with which we are not here concerned.

20. In 1926 the so-called Stroud Patent, covering the use of barite as a weighting agent in oil-well drilling, was issued to National's subsidiary, National Pigments & Chemical Company. It appears, however, that no great effort was made to develop a drilling-mud business until in 1929 a Mr. Ratcliffe became president of a California concern by the name of California Talc Company. That company, under Ratcliffe's leadership, began the promotion of a material competitive to barite, consisting of 95% barium sulphate and 5% bentonite (a colloid clay), which was called "Plastiwate".

21. As a result of Ratcliffe's efforts in California to promote his well-drilling mud, a controversy arose between him and National, in which National claimed that Ratcliffe's product infringed its Stroud Patent. The controversy was finally settled by the forming of a new company called "Baroid Sales Company of California", the stock of which was owned jointly by National and California Talc Company. During the depression years there was a further consolidation, and in 1936 the Baroid Sales Division of National was created in lieu of the former jointly-owned company, with Ratcliffe as its general manager. He continued in that position until his retirement in 1956.

22. In 1940, while National still had the protection of the Stroud Patent, its sales of ground barite for oil-well drilling in the United States amounted to 85.5% of the total sales of ground barite for that purpose in the domestic market. In 1943 the Stroud Patent expired, and since that time National's share of the barite market has suffered almost a steady decline.

23. According to the survey conducted by the Commission's staff, National's share of the total domestic market for barite used in oil-well drilling decreased from 41.3% in 1954 to 32.6% in 1958. National's share of that market, over the years, has decreased approximately 52.9% from its 85.5% share while the Stroud Patent was still in force.

24. The oil-well-drilling-mud industry today has become an important adjunct to the petroleum industry. On the Gulf Coast of Texas and Louisiana most wells over 9,000 or 10,000 feet deep require drilling mud containing barite. Drilling-mud technology has become highly specialized, and the respondent and other companies

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offer the services of trained specialists to oil-well drillers in connection with the sale of barite.

25. At the present time, the Baroid Division of National has barite mines in the following places:

Fountain Farm, Washington County, Missouri;
Magnet Cove, Arkansas;
Elko County, Nevada;
Greenough, Montana; and
Sweetwater, Tennessee.

It also has barite grinding mills located as follows:

Fountain Farm, Missouri;
Magnet Cove, Arkansas;
Merced, California;
Greenough, Montana;
Houston, Texas;
Corpus Christi, Texas (built in 1953);
Sweetwater, Tennessee (the L. A. Wood plant, acquired in 1956); and
New Orleans, Louisiana (constructed in 1957).

X. The Challenged Acquisitions

A. *L. A. Wood, Inc.*

26. In May 1956, the Baroid Division of National acquired the barite properties of L. A. Wood, Inc., a corporation located at Sweetwater, Tennessee, including land, leases, three washers and a grinding plant. National paid to the shareholders of the purchased corporation the equivalent in National Lead stock of \$2,000,000. The purchased property had been incorporated for only approximately two years at the time of the acquisition, but it had been operated by Mr. L. A. Wood as a barite mine for many years prior thereto.

27. National acquired the properties of L. A. Wood, Inc., in the expectation that they might have a reserve of available barite of about a million tons. Later prospecting and exploration, however, revealed that the reserve was no more than approximately 400,000 tons.

28. L. A. Wood, Inc., had sold crude barite to such customers as barium chemical manufacturers, glass manufacturers, and local contracting companies, and was engaged in commerce. In addition, it had sold ground barite to only one customer, Milwhite Mud Sales Company, a competitor of National's Baroid Division, engaged in the sale of barite and drilling muds to well-drilling companies.

29. In 1954, two years prior to the acquisition, L. A. Wood, Inc.'s total production was only 8,114 ton of barite, and of that amount

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only 3,359 tons consisted of ground barite, all of which was sold to Milwhite Mud Sales Company. In 1955 the total production was 21,847 tons of barite, of which 12,728 tons were sold to Milwhite Mud Sales Company.

30. L. A. Wood, Inc., was not a competitor of National, although it supplied ground barite to one of National's competitors.

B. Barytes Mining Company

31. In August 1956, National acquired the assets of Barytes Mining Company, a corporation owning 412 acres of land about fifteen miles from Potosi, Missouri, and a small, old washing plant. National paid for this property with its own stock to a value of approximately \$334,750. The controlling stockholders of this purchased property were Albert A. Wood and his father, L. A. Wood, who, in effect, had sold the other property previously discussed to National.

32. Barytes Mining Company produced only crude barite, and, with the exception of an insignificant amount sold elsewhere, it sold its entire production of crude barite exclusively to a single customer, Chicago Copper & Chemical Company, for the manufacture of barium chemicals, at a price ranging from \$16.50 to \$17.00 per ton f.o.b. Potosi, Missouri. It was engaged in commerce. None of its production was sold for ultimate use in well-drilling. The company's 1954 production was 9,067 tons of barite, and its 1955 production was 10,379 tons of barite.

C. Finlen & Sheridan Mining Company

33. Prior to 1956 Finlen & Sheridan Mining Company was a partnership owning and operating a barite mine and grinding mill in Greenough, Montana. Prior to the organization of the mining partnership, Finlen and Sheridan was a firm of contractors in the State of Montana, engaged in heavy construction and in earth-moving work. They discovered a barite deposit in Greenough, Montana, in the early 1950s, and having no experience in the mining and processing of barite, they communicated with the Baroid Division of National in an attempt to secure aid in the development of the discovered deposit. The Baroid Division assisted the partnership in the development of the mine, and subsequently in the design, construction and operation of a small grinding mill erected to produce ground barite. A contractual arrangement was entered into, the details of which are not here important.

34. During the years from 1953 through 1956, the partnership sold its ground barite only to National's Baroid Division, and, in

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addition, sold some crude barite to some customers not engaged in the drilling-mud industry. The partnership was engaged in commerce. In June 1956, they sold the mine and mill to National for \$400,000. At the time of this acquisition the estimated reserves of barite were only 32,350 tons. In 1954 the partnership produced 10,924 tons of crude barite; in 1955, 14,000 tons; and in 1956, prior to National's acquisition of the partnership's assets, 9,964 tons.

XI. The Relevant Market

35. In its recent decision in the *Brown Shoe* case, *supra*, the Supreme Court prescribed a formula for determining the "line of commerce," as meant by § 7 of the Clayton Act, which may be adversely affected by a merger. According to that formula, the "line of commerce," as expressed by the Court, the "product market,"

* * * may be determined by examining such practical indicia as industry or public recognition of the submarket as a separate economic entity, the product's peculiar characteristics and uses, unique production facilities, distinct customers, distinct prices, sensitivity to price changes, and specialized vendors.

36. The Supreme Court, likewise, prescribed a formula for determining the "section of the country" or "geographic market" within the meaning of § 7 of the Clayton Act, as follows:

The criteria to be used in determining the appropriate geographic market are essentially similar to those used to determine the relevant product market. * * * The geographic market selected must, therefore, both "correspond to the commercial realities" of the industry and be economically significant. Thus, although the geographic market in some instances may encompass the entire Nation, under other circumstances it may be as small as a single metropolitan area.

Such commercial realities should include, we believe, all the factors affecting the distribution and sale of the relevant product.

37. In the conduct of its survey of the barite industry and markets, the Commission's staff assembled figures with respect to the sale of barite for a number of end uses. The companies responding to the survey were asked to segregate their sales of barite to oil-well-drilling companies who use only ground barite; their sales to barium chemical manufacturers who use principally crude barite; their sales to glass manufacturers who use principally crushed barite in a size between crude and ground; their sales to lithopone manufacturers who use principally crude barite; and their sales to "other users," including crude, crushed and ground barite.

38. The evidence establishes that during the years 1954 through

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1958, the sale of ground barite for oil-well-drilling uses represented between 84.4% and 87.7% of all barite in all forms sold in the United States for all purposes.

39. In assembling its statistics on the sale of ground barite for oil-well-drilling uses, the Commission's staff divided the continental United States into five geographical areas, designated as the Gulf Coast area, the Mid-Continent area, the Rocky Mountain area, the West Coast area, and the "Other States" area, and called upon the responding companies to segregate the area in which their sales of ground barite for oil-well-drilling use were made. The Gulf Coast area was defined, for the Commission's survey purposes, as including the States of Florida, Georgia, Alabama, Mississippi, Louisiana and Texas, except the northern part of Texas and the drillings off-shore from the States named.

40. From all the evidence there emerges the fact that ground barite is an exceptionally important item in the drilling-mud industry in the Gulf Coast area, where geologic conditions produce high-pressure areas requiring the use of large amounts of barite to counteract those pressures in drilling operations. In the Mid-Continent area, the pressures encountered in well-drilling are relatively low, and the use of barite in that area is therefore only a minor factor.

41. The Commission's survey establishes that sales of ground barite to end users for oil-well drilling, for the period from 1954 through 1958, were distributed as follows:

Percent of Total of U.S. Sales Attributable to Area

Area	1954	1955	1956	1957	1958
Gulf Coast.....	88.12	90.398	92.356	88.443	87.293
Mid-Continent.....	2.80	2.235	1.934	4.982	4.558
Rocky Mountain.....	2.89	1.893	1.913	2.711	2.870
West Coast.....	5.93	5.406	3.753	3.801	5.155
Other States.....	.26	.068	.044	.063	.124
Total.....	100.00	100.000	100.000	100.000	100.000

42. The evidence shows that the respondent herein and its leading competitor, Magnet Cove Barium Corporation, are, and for many years have been, the two foremost sellers of ground barite for oil-well-drilling purposes in the United States, and that in the years 1956, 1957 and 1958, they sold between 93% and 95% of their production of such product in the area along the Gulf Coasts of Louisiana and Texas.

43. There is some evidence in the record relevant to the sale of barite for other purposes than that of oil-well drilling, but such evidence does not develop the economic importance of these other uses sufficiently to be significant in this proceeding.

44. The evidence shows further that the selling of ground barite for oil-well-drilling purposes constitutes in itself a separate, specialized business; that barite ground for oil-well-drilling purposes must have certain characteristics, both as to chemical content and as to size of grind, peculiar to itself; that the product is sold to a distinct class of customers, and at a price depending upon services rendered, as well as quality of product and other factors. We must conclude, therefore, that the selling of ground barite to end users for oil-well-drilling purposes constitutes the appropriate "product market" for the purpose of observing the possible effect of the mergers involved in this proceeding.

45. Furthermore, as concerns the "geographical market" or "section of the country," we must conclude that, since from 87.2% to 92.3% of all ground barite for oil-well-drilling purposes is distributed in the Gulf Coast area, as defined in the Commission's survey, and since that is the area wherein the respondent herein and its leading competitor sold from 93% to 95% of the "line of commerce" in question, the Gulf Coast area is the relevant market economically significant in this proceeding.

46. Counsel supporting the complaint, in his proposed findings as to the facts, does not define "line of commerce" or "section of the country;" yet he asserts correctly that barite is used principally in oil-well drilling, barium chemical manufacturing, lithopone manufacturing, and glass manufacturing. Apparently he considers all four uses of barium as constituting four separate lines of commerce relevant herein. He also states that barite for oil-well-drilling purposes is sold in Gulf Coast, Mid-Continent, Rocky Mountain, West Coast and other areas. This would seem to indicate that he considers the entire United States as the relevant market for oil-well-drilling purposes. In connection with such contentions, we must observe that not a single customer or purchaser of barite for any use other than oil-well-drilling purposes was brought to the witness-stand in this proceeding. Furthermore, as far as the oil-well-drilling industry is concerned, almost all the testimony relates to the production and sale of ground barite for oil-well-drilling purposes in the Gulf Coast area. At only one hearing, held in Oklahoma City, Oklahoma, was any testimony heard from witnesses who sold ground barite outside the Gulf Coast area.

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There, three witnesses gave some testimony concerning their operations in the so-called "Mid-Continent" area, and the substance of their testimony was that barite was an unimportant, low-volume, low-profit item in the territory in which they did business. Moreover, the statistics assembled through the Commission's survey show that total sales of ground barite for oil-well-drilling purposes in the Mid-Continent, Rocky Mountain, West Coast and "other states" areas were not "economically significant" within the rule of relevancy laid down in the *Brown Shoe* case, *supra*.

XII. Crude Barite Available To Grinders
Supplying The Relevant Market

A. Domestic Barite

47. The record shows that the grinding plants supplying the Gulf Coast area with barite obtain their ore from various States, including Missouri, Arkansas, Tennessee, Kentucky, Georgia, Texas and New Mexico.

48. In 1958 the Geologic Survey of the United States Department of the Interior estimated the "demonstrated" and "inferred" reserve of barite ore throughout the United States. Demonstrated reserves were defined as those that can be exploited under present technological and economic conditions, while inferred reserves were defined as the potential amount of ore that must await more favorable economic conditions or new techniques of mining. According to that survey, the estimates as of 1958 for the States of Arkansas, Missouri and the Southeastern States, Georgia, Tennessee, North Carolina and South Carolina, all of which are available as sources of supply for the Gulf Coast area, showed demonstrated barite reserves of 39,200,000 tons, and demonstrated and inferred reserves of 86,700,000 tons.

49. Witness Edward Eversole of Milwhite Mud Sales Company, long experienced in Missouri barite production, estimated, or rather, as he termed it, made a "guesstimate", that the Missouri field contained between 40,000,000 and 60,000,000 tons of reserve barite. In reality, this witness' "guesstimate" was the considered estimate of an expert in the field.

50. Dr. Garrett A. Muilenburg, another expert in the mining of barite, estimated that the total barite reserves in Missouri were in excess of 27,000,000 tons.

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B. *Imported Barite*

51. The record establishes that during the period from 1954 through 1958, crude barite ore was supplied to the Gulf Coast area from Mexico, Canada, Greece, Yugoslavia, Peru, Italy and, more recently, Spain and Morocco. The Commission's survey shows foreign ore receipts at Gulf Coast grinding plants as follows:

	<i>Tons</i>
1954.....	295,200
1955.....	333,463
1956.....	552,213
1957.....	822,657

52. In 1958, the receipts of foreign ore, for well-drilling purposes only, at Gulf Coast grinding plants declined to 529,857 tons when well-drilling and barite sales declined generally. That amount, however, still slightly exceeded the total domestic production of 515,520 tons for all uses in all areas in the United States.

53. The Milwhite Mud Company, a grinder of barite which, during the survey period of 1954 through 1958, cured and ground as much as 98,000 tons of barite in a single year, received most of such barite from foreign sources. Counsel supporting the complaint has stated that this company, the third-largest engaged in the mud business, "* * *" must rely almost wholly on the caprices of import". But witness Max Miller, president of Milwhite, testified that his reason for relying so heavily on foreign barite ore was as follows:

It can be secured cheaper on a world market. That is, it can be delivered to the ultimate point of use cheaper in buying from the world market than it can from mining any reserves in this country that we know about.

54. Witness Eversole of the Milwhite Mud Company explained that the importation of foreign ore adversely affected and depressed the demand for Missouri ore. When he testified in 1960, his estimate was that foreign ore processed in the Gulf Coast area was being supplied in that area at a cost of from \$2.50 to \$4.00 per ton less than the laydown cost of Missouri ore.

C. *Production of Barite by the Acquired Companies, Compared to the Total Supply Available for the Relevant Market*

55. We find that the reserves of barite acquired by the respondent from L. A. Wood, Inc. were approximately 400,000 tons, and those acquired from Barytes Mining Company were approximately

195,000 tons. We conclude, therefore, that the L. A. Wood, Inc. acquisition was equal to approximately 1.02% of the total demonstrated domestic reserves available for the relevant market, and 0.46% of the total inferred and demonstrated reserves available for that market. Similarly, we conclude that the Barytes Mining Company acquisition was equal to 0.49% of the total demonstrated domestic reserves available for the relevant market, and 0.22% of the total demonstrated and inferred reserves for that market.

56. A comparison of the respective production of L. A. Wood, Inc. and Barytes Mining Company with the total barite production in Arkansas, Missouri, Tennessee and Georgia (the principal states supplying the relevant market), plus foreign barite ore received at the Gulf Coast grinding plants in 1954 and 1955, the two years immediately preceding the acquisitions, shows the following:

	1954		1955	
	Tonnage of barite	Percent of total	Tonnage of barite	Percent of total
Total barite production in Arkansas, Missouri, Tennessee, and Georgia.....	779, 246	-----	947, 908	-----
Foreign crude barite ore received at gulf coast grinding plants.....	295, 200	-----	333, 463	-----
Totals.....	1, 074, 446	-----	1, 281, 371	-----
Barite production of L. A. Wood, Inc.....	8, 114	0.76	21, 847	1.71
Barite production of Barytes Mining Co.....	9, 067	0.84	10, 379	0.81

57. Barytes Mining Company supplied no crude ore to any grinding plants. L. A. Wood, Inc., supplied its own grinding plants with 3,359 tons of crude ore in 1954 and 12,768 tons in 1955. The total receipts of ore at grinding plants serving the Gulf Coast were 918,093 tons in 1954 and 1,105,248 tons in 1955. L. A. Wood, Inc., thus supplied 0.37% in 1954 and 1.16% in 1955 of all crude ore received at such grinding plants in those two years.

58. The evidence of record compels the factual conclusion that the relatively small amount of barite produced by the two corporations acquired by respondent was not enough to have a substantial or significant effect on the economic situation in the relevant market. Furthermore, since the property acquired from the partnership, Finlen & Sheridan Mining Company, was sold outside the scope of the relevant market, no further reference will be made to it.

D. Availability of Barite Ore to New Entrants to the Relevant Market

59. Since 1956, the date of the challenged acquisitions, nine new grinders have entered the barite industry in the relevant market.

The evidence shows that all but two of these grinders have established for themselves some adequate domestic source of crude ore, the other two new entrants being engaged in custom grinding only. The survey returns of five of these new entrants, namely, Hayes-Sammons, International Minerals, Arcobar, Oil Bar, and American Colloid Oil, established that during the survey period, 1954 through 1958, each of them, without exception, obtained more crude ore than was ground by or for it during the period for which it reported. In other words, they did not suffer any shortage of domestic crude barite ore.

60. Witnesses from two of the new-entrant grinders, Hayes-Sammons and International Minerals, testified to difficulty in obtaining supplies of domestic crude barite. Their testimony, however, indicates that their chief problem was not inability to procure crude barite, but inability to procure it at the price they wanted to pay. We believe that this latter fact with respect to price largely nullifies the significance of this testimony.

61. According to the Commission's survey, from 1956 through 1958 fifteen companies entered the industry as barite producers in States available to supply the relevant market.

62. Over the past few years, independent producers in both Missouri and Tennessee have had crude ore which they have been unable to sell, and some producers have had to maintain stock-piles.

63. We must, therefore, conclude that the acquisitions here in question have had no appreciable adverse effect upon the supply of crude barite available in the relevant market.

XIII. Effect of Merger on Sources of Ground Barite for Relevant Market

64. All ground barite used in oil-well drilling in the Gulf Coast area during the period covered by the Commission's survey (1954-1958) was, with insignificant exceptions, supplied by grinding plants located in the States of Arkansas, Georgia, Louisiana, Mississippi, Missouri, New Mexico, Tennessee and Texas.

65. Prior to 1940, there were two barite-grinding companies capable of supplying sellers of ground barite in the relevant market: Respondent herein, and Thomas, Weinman & Company. By 1956, eight companies, operating nineteen grinding plants, were supplying the relevant market's demand of 1,344,000 tons of ground barite. By 1958, the number of barite-grinding companies had increased to twelve, with 29 grinding plants, supplying a decreased demand of less than 950,000 tons. In 1961, three new companies entered

this market, making fifteen companies, operating 32 grinding plants, supplying a demand of 906,345 tons of ground barite in the relevant market.

66. One of the corporations acquired by respondent, Barytes Mining Company, was not a barite grinder. Accordingly, in determining the importance of the acquired corporations as sources of ground barite for the relevant market, consideration need be given only to L. A. Wood, Inc., the other corporation acquired by respondent.

67. L. A. Wood, Inc., supplied ground barite to one customer only: Milwhite Mud Sales Company. In 1955, one year before the challenged acquisition, L. A. Wood's sales of ground barite to its single customer amounted only to 12,768 tons, which represents only an approximate 1% of the total tonnage of ground barite (1,102,795 tons) sold in the relevant market in 1955.

68. At the time of its acquisition of L. A. Wood, respondent offered to contract with Milwhite Mud Sales for a continued supply of barite from the L. A. Wood properties. Milwhite Mud Sales, however, declined this offer, and thereafter procured its barite from other sources.

69. The foregoing facts compel the conclusion that there has been active and increasing competition in the sale of ground barite in the relevant market since the challenged acquisitions, despite the fact that the demand for this product in this market has substantially decreased year by year. The acquisitions, therefore, can obviously have had no adverse effect upon competition in the sale of ground barite in the relevant market.

XIV. Sale of Ground Barite in the Relevant Market—Effect of the Acquisitions

70. In 1940, while National, the industry's pioneer in the use of barite for oil-well-drilling purposes, still held its protective patent on that product, it had 85% of all the sales of ground barite for oil-well-drilling purposes. Following the expiration of the patent rights in 1943, National experienced a steady decline in its share of the market. This early decline was related to the eminence of Magnet Cove Barium Corporation, the whollyowned subsidiary of Dresser Industries, and Milwhite Mud Sales Company.

71. The substantial changes in the market shares held by the respondent and its competitors during the period 1954 through 1958, based upon the Commission's survey, are graphically portrayed by the following tabulation:

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	1954	1955	1956	1957	1958
	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
Magnet Cove Barium Corporation.....	46.37	47.28	46.93	46.05	44.71
National.....	40.72	35.94	36.65	36.86	33.39
Milwhite Mud.....	10.40	14.74	14.27	14.32	17.01
All others.....	2.51	2.04	2.15	2.77	4.86
	100.00	100.00	100.00	100.00	100.00

72. At the request of counsel for National, subpoenas were issued and served in January 1962, on all the companies other than National and Dresser Industries which were known to be selling ground barite for oil-well-drilling purposes in the Texas and Louisiana segment of the Gulf Coast area, the portion of the relevant market wherein approximately 90% of all sales of that product had been made. Thereafter, pursuant to agreement between counsel, stipulated testimony was received concerning the production of barite during 1959 through 1961, subsequent to the Commission's survey. Based upon these stipulations and upon exhibits showing the sales of National and Dresser Industries in the Texas and Louisiana segment of the Gulf Coast area, an analysis of the competitive trend reveals that in that area, since 1959, the sales of the two oldest producers of ground barite, National and Magnet Cove, have declined steadily, and these two companies now hold considerably less than the respective market shares they held in the Gulf Coast area as a whole in 1956, the year of the challenged acquisitions; while the market share of the independent, relatively new entrants in the Texas and Louisiana segment of the relevant market has increased more than threefold, from slightly over 6% in 1959 to 20.6% in 1961, as follows:

	1959	1960	1961
	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
Magnet Cove Barium Corp. (including Superbar Co., Superbar Mud Sales, Inc., and Gillen Oil Field Service, Inc.).....	43.250	35.630	31.657
National Lead Company.....	30.362	29.223	28.025
Milwhite Mud Sales Co.....	21.232	21.500	19.704
Independent mud companies.....	6.126	13.587	20.614
	100.000	100.000	100.000

73. The record establishes that as of 1961, there were thirteen companies, exclusive of the three largest companies in the field, National, Magnet Cove and Milwhite Mud, selling ground barite in the combined Texas and Louisiana Gulf Coast areas, only one of which had made any direct sale of ground barite anywhere in

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the entire Gulf Coast area prior to 1957. Taken as a group, these new entrants into the market had sold not a single ton of ground barite in 1956, but their aggregate sales, by 1961, had reached a total of 186,831 tons, or approximately 20.6% of the relevant market.

74. The following tabulation illustrates the approximate changes in market shares which have taken place from 1954 to 1961:

	Entire gulf coast area			Louisiana-Texas segment of gulf coast area—1961
	1954	1956	1958	
	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
National.....	40.72	36.65	33.39	28.03
Magnet Cove (Magcobar).....	46.37	46.93	44.71	31.66
Milwhite Mud.....	10.40	14.27	17.01	19.70
Independent mud companies.....	2.51	2.15	4.89	20.61

75. Counsel supporting the complaint has presented the facts relative to respondent's changing share of the market through the years 1954 to 1958 very differently from the findings made above. In a series of tabulations in his proposed findings, he purports to show that prior to the acquisitions in question and the cancellation by National of its consignment distributorships, National's share of the market for ground barite sold to oil-well drillers was nil, and that from 1957 through 1958, National's share of the market rose steadily and substantially. Counsel appears to have reached this conclusion by treating the sales made by National's "consignment dealers" as sales made by independent competitors. Since the evidence clearly shows that National's consignment dealers were agents selling barite for and on behalf of National, never taking title thereto themselves, the conclusion proposed by counsel supporting the complaint is completely unrealistic.

76. It should be here observed that we are not now considering the justice or injustice of any hardship which may have been worked upon such dealers by the discontinuance of their employment as consignment dealers by National. They were not, however, denied access to an adequate supply of barite; they could, and several did, elect to continue purchasing barite from National and from other sources, but as independent operators instead of as National's agents. In fact, far from restraining competition, National's discontinuance of its consignment dealerships actually created new potential competitors for itself. More detailed discussion of this factual situation follows.

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XV. Changes in Competitive Techniques Since the Acquisitions

77. In 1956, 1,343,986 tons of ground barite were sold in the relevant market, more than in any year before or since. In 1956 a "seller's market" prevailed. By 1958, however, reduced activity in oil-well drilling had resulted in a decline in the demand for barite to 934,182 tons, or 400,000 tons less than the peak year.

78. According to the testimony of officials of respondent, National, in an effort to meet rising competition and in order to justify the lowering of its price for barite, announced in May of 1958, that it would terminate its consignment-distributor arrangement by which it had previously sold its barite in the relevant market, and would institute a system of "Baroid-owned" stores and warehouses through which direct sales would be made to oil-well drillers. National's distributors were permitted, at their option, either to terminate their contracts immediately, or to continue them in force for as long as six or seven months. At least four of these distributors subsequently became independent competitors of respondent.

79. Respondent has always followed the practice of selling barite at a price which included both the barite sold and a technical engineering service to aid the well-driller in the efficient use of barite. Following the price reduction by Baroid in May, 1958, competitive price concessions have not only continued, but have taken various forms. These price concessions include list prices lower than Baroid's prices; discounts of from 5% to 10% off list prices; free delivery; discounts up to 15% on sales of barite without engineering service; and additional discounts based upon volume. Of all these practices, the one of selling barite without engineering service seems to have become the most prevalent. This practice, and the resulting difference of price between respondent's price, which included such service, and certain of its competitors' prices, which did not, is shown by the following tabulation:

Baroid competitor	Competitor's price per ton without service	Baroid's price per ton with service
Bourg Mud & Chemical Co.	\$41.07.....	\$47.08
Louisiana Mud Company.....	15 percent discount.....	42.60
Terminal Mud & Chemical Co., Inc.....	\$35.00-\$36.00.....	42.80
General Mud Service, Inc.....	\$41.62.....	46.38
Oil Base, Inc.....	\$39.42.....	46.38
Mission Mud Co. of Louisiana, Inc.....	\$37.79.....	42.80

80. It appears that the "sales without service" technique employed by the new barite companies, together with National's refusal to adopt that technique itself and lower its sales prices accordingly, far from lessening competition in the relevant market, has actually stimulated and even generated it.

XVI. Conclusions

81. The record contains, as we have observed, not only statistics reflecting the market shares of the respective members of the industry, "* * * the primary index of market power;"; but also evidence of "* * * its structure, history and probable future,* * *", which, together, constitute all the necessary factors "* * * for judging the probable anticompetitive effect of the merger."*

82. These statistics reveal that respondent, as a result of its pioneer efforts in developing a much-needed drilling mud, was granted a patent on barite for this use, which, for seventeen years, secured to respondent a legal monopoly. Upon the expiration of the patent, in 1943, respondent's share of the market began to decline, and has since consistently and steadily continued to decline, as new companies availed themselves of the opportunity to enter the barite market. Clearly, therefore, the acquisitions here in question conferred upon respondent no substantial power to control prices, production, or sales of barite. On the contrary, the record indicates that price competition has grown keener each year since the mergers; that the production and sales of barite by National's new competitors have increased substantially; and that National's customers particularly the large oil companies, have been buying more and more of their requirements of barite from such new competitors, and, in consequence, National's sales and share of the market have materially declined, and those of its competitors have proportionately increased.

83. We must conclude, therefore, that the acquisitions in question have not tended substantially to lessen competition nor to create a monopoly in the barite oil-well-drilling mud industry, and that there is no reasonable probability that they will have such an effect in the future. Therefore, the challenged acquisitions have not resulted in any violation of either § 7 of the Clayton Act or § 5 of the Federal Trade Commission Act, and the Respondent's motions to dismiss the complaint should be granted. Accordingly,

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

*Footnote 38, *Brown Shoe* opinion, *supra*.

ORDER DISMISSING COMPLAINTS AND VACATING INITIAL DECISIONS

These two, separate matters are before the Commission on the appeal of counsel supporting the complaints from the hearing examiner's initial decisions dismissing both complaints.

The complaints charged the respondent barite producing and selling corporations with having made acquisitions of other corporations and companies in the barite industry in violation of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act. Both complaints were issued on March 26, 1958. After extensive hearings, the hearing examiner filed initial decisions dismissing both complaints on October 26, 1962, concluding (1) that the acquisitions had not tended substantially to lessen competition or to create a monopoly in the line of commerce consisting of the production and distribution of barite for use in the oil-well-drilling industry and, (2) that there is no reasonable probability that the acquisitions will have such an effect in the future.

The Commission has reviewed the evidence and considered the arguments of the parties and has concluded that dismissal of both complaints is proper. The Commission, however, does not consider the hearing examiner's initial decisions appropriate in all respects and does not adopt them as the decisions of the Commission.

The Commission is keenly aware of, and very much concerned about, the very high degree of concentration in the barite industry demonstrated by the evidence of record in these proceedings. In this connection, the records reflect that in 1961 respondents and the third largest competitor had a combined market share of 79.4 percent of ground barite sold in the Texas and Louisiana Gulf Coast area, a significant section of the country. The records reveal the shares of Dresser-Magnet Cove and National Lead in this section in 1961 were 31.6 percent and 28 percent, respectively.

The degree of concentration in the barite industry was pronounced when these acquisitions took place, and the fact that there has been some decline occasioned by new entrants since the acquisitions has not reduced the Commission's concern over the future trend of competition in this industry. In an industry as concentrated as this, the importance of preventing even slight increases in concentration is great. See *United States v. Philadelphia National Bank, et al.*, 374 U.S. 321, 365, n. 42 (1963).

With only three firms accounting for 79.4 percent of the market in 1961, concentration in the barite industry has reached impressive proportions strongly suggesting that any future acquisitions in this industry would raise questions of utmost gravity.

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The Commission has determined that the evidence of record in these proceedings does not provide a sufficient basis for issuance of divestiture orders with respect to the acquisitions challenged in the complaints. The Commission, however, believes that the public interest requires that it exercise close scrutiny of any similar future acquisitions made in this industry. Accordingly:

It is ordered, That the initial decisions of the hearing examiner be, and they hereby are, set aside.

It is further ordered, That the complaints be, and they hereby are, dismissed.
