

IN THE MATTER OF
PHILLIPS PETROLEUM CO. ET AL.

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

Docket C-1088. Complaint, Aug. 2, 1966—Decision, Aug. 2, 1966

Consent order requiring the dissolution of major joint ventures in the polyolefin plastics field between Phillips Petroleum Co. of Oklahoma and National Distillers and Chemical Corp. of New York City, and requiring divestiture of a resin plant and three acquisitions made by one of these joint ventures, and requiring the construction of two new resin plants by Phillips and banning future acquisitions and joint ventures by Phillips or National.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents have violated the provisions of Section 7 of the Clayton Act and Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. §§ 18 and 45(a)(1), and that a proceeding in respect thereof would be to the interest of the public, issues this complaint, stating its charges as follows:

I. Definitions

1. For purposes of this complaint the following definitions shall apply:

(a) "Resins" are a class of solid or semi-solid organic products generally of high molecular weight with no definite melting point.

(b) "Polyolefins" are resins formed by the polymerization (*i.e.*, linking together) of molecules of unsaturated hydrocarbons such as ethylene or propylene. The most important polyolefins are polypropylene and low and high density polyethylene.

(c) "Low density [sometimes called "conventional"] polyethylene" is a resin formed by the polymerization of purified ethylene and having a density of 0.940 or lower.

(d) "High density [sometimes called "linear"] polyethylene" is a resin formed by the polymerization of purified ethylene and having a density greater than 0.940.

(e) "Polypropylene" is a resin formed by the polymerization of purified propylene.

(f) "Fiber grade [sometimes called "filament grade"] polypropylene resin" is that grade of polypropylene resin suitable for commercial use in the production of filaments and fibers.

II. The Respondents

a. *Phillips Petroleum Company*

2. Respondent Phillips Petroleum Company ("Phillips") is a corporation organized and existing under the laws of the State of Delaware, with its principal office and principal place of business at Bartlesville, Oklahoma.

3. Phillips, together with its consolidated subsidiaries, is a fully integrated company which distributes petroleum products in almost every state of the United States. Its operations include exploration for and production of crude oil and natural gas; the refining, transporting, and marketing of petroleum; and the manufacture and marketing of petrochemical products.

4. Phillips is the 34th largest industrial corporation in the United States in terms of sales and the 19th largest in terms of assets. Phillips' total sales in 1964 exceeded \$1.3 billion. Its assets, as of December 31, 1964, were nearly \$2 billion, and its retained earnings exceeded \$859 million. Phillips has for many years enjoyed a substantial cash flow and ready access to institutional funds and other sources of capital. During 1964, Phillips' cash flow amounted to \$240 million.

5. Phillips derives a substantial portion of its revenue from the manufacture and sale of petrochemicals. It is a major producer of propylene and ethylene, the raw materials for the production of polyolefin resins. Phillips is also a major producer of polyolefin resins—it is one of the nation's leading producers of high density polyethylene resin, and through joint ventures with National Distillers and Chemical Corporation ("National") which are described more fully below in paragraphs 13 through 19, Phillips is a substantial producer of low density polyethylene resin and polypropylene resin. Finally, Phillips is extensively engaged in the fabrication and sale of end products manufactured from polyolefin resins—polyethylene film and sheet, polyethylene-coated milk cartons and other polyethylene-coated products, injection-molded plastic products, and pipe, hose and fittings made from polyethylene or polypropylene.

6. Phillips has long been a leader in research and development, ranking eighth among all industrial companies in U.S. patents issued in 1963. It derives substantial revenue from the licensing of its patents and from technical services provided in connection with such licensing. In the area of polyolefin technology, it holds the patent on the process most widely used in this country for the production of high density polyethylene; licensees of this process for producing high density polyethylene include Union Carbide Corporation and Celanese Corporation of America. It is also one of the claimants for the basic patent on polypropylene.

7. Phillips is and for many years has been extensively engaged in the purchase, sale and shipment across state lines of petroleum, polyolefins and other products. Phillips is engaged in "commerce" within the meaning of the Clayton and Federal Trade Commission Acts.

B. National Distillers and Chemical Corporation

8. Respondent National Distillers and Chemical Corporation ("National") is a corporation organized and existing under the laws of the State of Virginia, with its principal office and principal place of business at 99 Park Avenue, New York, New York.

9. National is a leading manufacturer of liquor and industrial alcohol. It also produces and markets non-ferrous metal products, aircraft and missile components and a wide variety of chemicals.

10. National is the 123rd largest United States industrial corporation in terms of sales and the 78th largest in terms of assets. National's total sales in 1964, excluding excise taxes, were ap-

proximately \$500 million; its assets, as of December 31, 1964, exceeded \$600 million, and its retained earnings exceeded \$225 million.

11. National is one of the largest plastics producers in the world. It is also one of the principal suppliers of products made of hydrocarbons extracted from natural gas. National, both independently and through joint ventures, is extensively engaged in the manufacture and sale of polyolefin resins. It was the nation's third ranking producer of low density polyethylene resin in 1962. Through National Petro Chemicals Corporation, a joint venture with Owens-Illinois, Inc., it is a substantial producer and marketer of high density polyethylene resin. Through joint ventures with Phillips, described more fully below in paragraphs 13 through 19, National produces low density polyethylene and polypropylene resins.

12. National is and for many years has been extensively engaged in the purchase, sale and shipment across state lines of alcoholic beverages, polyolefins and other products. National is engaged in "commerce" within the meaning of the Clayton and Federal Trade Commission Acts.

C. Alamo Industries, Inc.

13. Respondent Alamo Industries, Inc. ("Alamo"), formerly named Alamo Polymer Corporation, is a corporation organized and existing under the laws of the State of Delaware, with its principal office and principal place of business at 4037 East Independence Boulevard, Charlotte, North Carolina.

14. Alamo is a joint venture equally owned by National and Phillips and was organized in July, 1962 for the production of polypropylene resin and film. It started production of polypropylene in 1964 in a new plant. In 1965 construction was started on an expansion of this plant which will double its capacity. Upon the completion of this expansion in 1966 Alamo will have an annual production capacity for polypropylene resin of 32 million pounds. Alamo anticipates that its sales of polypropylene resin in 1966 will exceed 36 million pounds.

15. Alamo has consummated a number of partial or complete acquisition of companies engaged in the production of products which use or are potential users of polypropylene. Through such acquisitions Alamo has become a leading company in the production and development of polypropylene filaments, fibers and other

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polypropylene products. The acquisitions are discussed in more detail in paragraph 39, below.

16. Alamo was organized for and is engaged in the sale and shipment of polypropylene resin, polypropylene film and polypropylene end products across state lines. Alamo is engaged in "commerce" within the meaning of the Clayton and Federal Trade Commission Acts.

D. A-B Chemical Corporation

17. Respondent A-B Chemical Corporation ("A-B") is a corporation organized and existing under the laws of the State of Texas, with its principal office and principal place of business at Deer Park, Harris County, Texas.

18. A-B is a joint venture equally owned by National and Phillips and was organized in 1962 for the production of low density polyethylene resin. The only product it produces is low density polyethylene resin. In 1964 it accounted for 7% of total U.S. production. Expansion has been authorized which will double the capacity of A-B and probably result in it having the third largest capacity of any company in the industry.

19. A-B was organized for and is engaged in the sale and shipment of low density polyethylene resin across state lines. A-B is engaged in "commerce" within the meaning of the Clayton and Federal Trade Commission Acts.

*III. The Nature of Trade and Commerce**A. Generally*

20. The manufacture of plastics is an important and rapidly growing industry. The production of plastics in the United States has risen from a volume of 1 billion pounds in 1946 to 10.1 billion pounds in 1964. The total value of shipments of plastics in 1963 exceeded \$2 billion, and the value of shipments of plastics products exceeded \$3 billion.

21. The growth in production of polyolefins has been rapid. In 1964, production exceeded 2.8 billion pounds, more than double the amount produced in 1960. Furthermore, in 1964 polyolefin production represented 29% of all plastics production. The value of polyolefin shipments in 1963 exceeded \$500 million.

22. The raw materials for the production of polyolefins are derived from natural gas and petroleum. The primary source is the "cracking" of petroleum gases such as ethane, propane, or light-

naphtha hydrocarbons. The ethylene and propylene derived from the "cracking" process are polymerized into resin. Small amounts of fillers, plasticizers and colorants may be added to the resin. The resin is then fabricated into intermediate or end products.

23. There are a number of major uses for polyolefin resins, with film and sheet constituting the largest use and molded articles the next largest. Molded articles include blow-molded containers such as bleach and detergent bottles and injection-molded articles such as housewares, toys and components for home appliances. Pipe and the extrusion coating of paper or paperboard (*e.g.*, milk cartons) represent other major polyolefin end uses.

24. Though the three polyolefin resins overlap, each resin has characteristics that suit it for particular purposes. Because low density polyethylene resin is the most flexible, has the least tensile strength, and has the lowest softening point, it is the predominant resin in the production of film and sheet, in wire and cable coating, and in extrusion coating. High density polyethylene resin, with its greater rigidity and strength, predominates in the manufacture of blow-molded containers. Polypropylene is the stiffest, has the greatest tensile strength and the highest melting point. It accounts for practically all polyolefin resin consumed in the manufacture of filament and fiber. A few companies produce all three resins, however, most produce only one or two of the three.

B. *Low Density Polyethylene Resin*

25. Low density polyethylene was developed and patented by Imperial Chemical Industries, Ltd., of Great Britain ("I.C.I.") before World War II. Production has risen steadily from 8 million pounds in 1943 to 1.9 billion pounds in 1964.

26. Low density polyethylene resin is now being produced by 10 companies. In 1962 the four largest producers accounted for 70% of total production and the eight largest for 95%.

27. Barriers to entry into the production of low density polyethylene are relatively high. Purchase of a license and technical know-how to undertake production may cost several million dollars. A relatively large plant is required for entry. The average sized plant has a capacity of approximately 130 million pounds a year, and the smallest has a capacity of about 50 million pounds. At the present time A-B has authorized the construction of two new plants each having 70 million pounds annual capacity. The

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construction costs for a plant of such size are approximately \$14 million.

28. Forward vertical integration into fabrication by resin manufacturers also presents a major barrier to entry into the manufacture of low density polyethylene resin. The leading end use of low density resin is in the manufacture of film and sheet. Until 1955, manufacture of film and sheet was primarily a small business operation, and only one polyolefin resin producer was engaged in its manufacture. By the end of 1962, largely through acquisitions, twelve polyolefin producers had obtained facilities for the manufacture of polyethylene film or sheet. Production by such manufacturers accounted for over one-half of total shipments of film and sheet in 1962.

29. Considerable vertical integration, largely through acquisition, has also occurred in other end-use markets for low density polyethylene resin. In extrusion coating, Phillips, in October, 1964, acquired Sealright-Oswego Falls Corporation, which in 1963 accounted for 8% of U.S. value of shipments of paper milk cartons. Milk cartons constitute the largest single use for extrusion coated paper and paperboard. Additional integration occurred in other extrusion coating uses with the acquisition by Phillips, in December, 1962, of the H. P. Smith Paper Company, a producer of polyethylene coated paper and paperboard. There have also been a number of acquisitions in the last few years of companies producing pipe from low density polyethylene.

C. Polypropylene

30. Polypropylene resin was developed in 1954 in Italy. Product and process patents have been issued in the United States and other countries to Montecatini Mining and Chemical Company, a large Italian chemical company. However, the patent situation in the United States is still unsettled. An interference proceeding is presently before the Patent Office involving the composition-of-matter patent. Phillips is among the claimants which also include Standard Oil of Indiana, du Pont and Montecatini. Commercial production of polypropylene resin began in this country in 1957 and reached 270 million pounds in 1964. Rapid growth of consumption has been forecast. During the first six months of 1965 production was 42% greater than in the corresponding period of 1964.

31. Including Alamo, there are nine companies now engaged in production of polypropylene resin in the United States. In 1962,

the four largest producers accounted for 85% of total U.S. production of polypropylene resin.

32. Barriers to entry into the production of polypropylene resin are relatively high. Based on the Alamo experience, a plant of 15 million pounds annual capacity would require a total investment of approximately \$4 to \$5 million. Most polypropylene plants have a capacity somewhat larger than this. Additional funds would be required to obtain the use of necessary patents and know how.

33. Further barriers to entry into the production of polypropylene resin arise from the substantial degree of vertical integration in the processing and fabrication of the resin. One of the principal uses for polypropylene resin is the manufacture of filament and fiber. Beginning in 1962 polypropylene producers have made six partial or complete acquisitions of companies in the fiber field. Alamo is responsible for four of these acquisitions.

34. Fiber grade polypropylene resin differs substantially in composition and characteristics from polypropylene resin produced for other uses. Specialized and costly additives must be blended into the resin to produce the necessary stability, color and other unique characteristics necessary for the manufacture of fibers. Polypropylene resin for fiber usage sells at substantially higher prices than polypropylene resin for other uses.

IV. Alamo Industries: Background and Violations Charged

A. Background

35. Both National and Phillips had been working for several years on the development of polypropylene production on a commercial scale prior to their organization of the Alamo joint venture. Both had extensive technical and marketing skills developed from their experience with low and high density polyethylene, and, in addition, had pilot plants in operation for the production of polypropylene prior to the organization of the joint venture.

36. At the time of the organization of the joint venture, National was a leader in the development of polypropylene film. Phillips at this time had developed a process for producing polypropylene, based on a patented process for producing high density polyethylene, and had initiated the designing of a commercial polypropylene plant. Phillips also had a surplus supply of the raw materials necessary for the production of polypropylene. In 1964 it produced 16% of all propane produced for chemical conversion purposes.

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37. In March 1962 the President of Phillips, Stanley Learned, wrote to John Bierwirth, Chairman of the Board of National, that Phillips had "proceeded far enough with the pilot plant work on polypropylene that we authorized the start of the designing of a commercial plant about a week or ten days ago," and then suggested the possibility of a joint venture. National Board Chairman Bierwirth replied, "We definitely feel that we must be basic in the manufacture of polypropylene resins and I would certainly like to discuss working out some arrangement with you."

38. In July 1962, Phillips and National agreed to organize Alamo as a joint venture to engage in the manufacture of polypropylene resin and film products. Phillips and National each agreed to purchase one half of the capital stock for \$1,750,000 and each agreed to provide an additional \$4.5 million in funds. Phillips agreed to build and operate a polypropylene plant of 15 million pounds annual capacity for Alamo. In addition, Phillips agreed to license Alamo under its polypropylene process patent and National agreed to license to Alamo its polypropylene film know-how. The polypropylene resin that is not used internally by Alamo is sold to Phillips and National for their use or for sale by their respective sales staffs.

39. Subsequent to its organization Alamo acquired five operations which are consumers or potential consumers of polypropylene.

(a) In February 1964 Alamo acquired Wall Industries, Inc., from Phillips. Phillips had acquired this company in August 1963 in exchange for Phillips stock having a value of approximately \$11 million. Wall is a major producer of rope, particularly synthetic rope, with sales in excess of \$28 million during the year preceding its acquisition by Phillips.

(b) In May 1964 Alamo acquired, for approximately \$4 million, a plant which National had erected at Stratford, Connecticut, for the manufacturer of polyolefin film.

(c) In March 1965 Alamo acquired the assets of Gerfil Corporation. Gerfil makes polypropylene yarns for hosiery, lingerie, swim wear, sweaters and other knit fabrics. Gerfil Corporation had been organized in February 1964 as a joint venture between Alamo and G. F. Chemical Corporation, Alamo owning 31.4% of the capital stock and G. F. Chemical the remainder. The total assets of Gerfil Corporation at the time of its organization were in excess of \$6 million.

(d) In September 1964 Alamo acquired, for approximately

\$5 million, from Reeves Brothers, Inc., that company's synthetic fiber and filament production facilities at Spartanburg, South Carolina and related marketing facilities.

(e) In September 1964 Alamo acquired for \$10 million a 50% interest in Beacon Manufacturing Company, a substantial blanket producer, which is developing the use of polypropylene in blanket manufacture. During the year preceding its acquisition Beacon had sales in excess of \$35 million.

B. Violations Charged

40. The effect of National's and Phillips' joint formation of Alamo, their respective acquisitions of the stock of Alamo, and of their continuing use of their stock interests to control the operations of Alamo, including the acquisitions made by Alamo as described in paragraph 39, may be substantially to lessen competition or to tend to create a monopoly in the production and sale of polypropylene and/or fiber-grade polypropylene in violation of Section 7 of the Clayton Act, and in violation of Section 5 of the Federal Trade Commission Act, in that:

(a) Potential competition in the production of polypropylene has been eliminated; but for the Alamo joint venture there is a reasonable probability that both National and Phillips would have separately entered into the production of polypropylene; at the least, there is a reasonable probability that one would have entered into the production of polypropylene while the other would have remained a significant potential competitor and thus acted as a restraining influence on anticompetitive behavior;

(b) Already high concentration levels in polypropylene production and/or sales may be substantially increased and the possibility of deconcentration lessened;

(c) The joint interest of National and Phillips in Alamo has created inducements and incentives for avoidance of competition between them in the manufacture and sale of propylene-based and ethylene-based products including polypropylene and low density polyethylene resins as well as end products;

(d) The vertical acquisitions by Alamo of concerns using polypropylene may tend to foreclose actual or potential competition in the production and sale of polypropylene in general and fiber-grade polypropylene in particular by reason of the barriers to entry which may result from such acquisitions; and

(e) Already high concentration levels in the production of polyolefins and in the petrochemical industry generally may be

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substantially increased and the possibility of deconcentration lessened.

V. A-B Chemical Corporation: Background and Violations
Charged

A. *Background*

41. National entered into production of low density polyethylene resin in 1955 through a joint venture with Panhandle Eastern Pipeline Company at Tuscola, Illinois. National subsequently acquired complete ownership of the Tuscola plant. In 1958 National built another low density polyethylene plant at Houston, Texas. In 1962 National was the third largest producer of low density polyethylene in the nation.

42. Phillips had been engaged in the sale of low density polyethylene resin for several years prior to the organization of the A-B joint venture. It is one of the leading United States producers of ethylene, the raw material for low density polyethylene, and was the supplier of ethylene to National's Houston plant at the time of the organization of the A-B joint venture.

43. On or about November 20, 1962, National and Phillips each purchased 50% of the capital stock of A-B, each contributing \$5 million for its respective interest. As part of the agreement, National agreed to sell its Houston low density polyethylene plant to A-B for \$34,123,206, said purchase to be financed by bank loans. It was also agreed that National would manage and operate the plant for A-B.

44. Substantially all of the low density polyethylene resin produced by A-B is sold to Phillips and National for their use or for marketing by their respective sales staffs. Under a long term contract, all of A-B's requirements for ethylene are purchased from Phillips.

45. At present two new low density polyethylene plants, each having a capacity of 70 million pounds, have been authorized by the Board of Directors of A-B. Neither Phillips nor National has any plants under construction for its own independent production of this resin. National, however, still operates its plant at Tuscola, Illinois, besides managing and operating A-B's plant.

B. *Violations Charged*

46. The effect of National's and Phillips' respective acquisitions of the stock of A-B, and their continuing use of their stock inter-

ests to control the operation of A-B, may be substantially to lessen competition or to tend to create a monopoly in the production and sale of low density polyethylene, in violation of Section 7 of the Clayton Act, and in violation of Section 5 of the Federal Trade Commission Act, in that:

(a) Potential competition in the production of low density polyethylene has been eliminated; but for the A-B joint venture there is a reasonable probability that Phillips would have entered into the production of low density polyethylene on its own; at the least, Phillips would have remained a significant potential competitor and thus acted as a restraining influence on anticompetitive behavior;

(b) Already high levels of concentration in the production and/or sale of low density polyethylene may be substantially increased and the possibility of deconcentration decreased;

(c) The joint interest of National and Phillips in A-B has created inducements and incentives for the avoidance of actual and potential competition between them in the manufacture and sale of propylene-based and ethylene-based products including polypropylene and low density polyethylene resins as well as end products;

(d) Already high concentration levels in the production of polyolefins and in the petrochemical industry generally may be substantially increased and the possibility of deconcentration lessened.

VI. Additional Actions and Agreements By and Between Respondents: Background and Violations Charged

A. Background

47. Phillips and National are actual or potential competitors of one another in many product areas, except to the extent that such competition is restrained or prevented by the conspiracy, combination or common course of action hereafter alleged. This restraint arises out of agreements to limit production, agreements to allocate markets, agreements to investigate and exploit jointly new product opportunities, and other explicit and implicit agreements, as set forth in more detail below.

48. Substantial restraints on trade and elimination of competition have occurred and are continuing to occur because of various unlawful agreements and understandings existing between Phillips and National. Both companies produce and market high den-

sity polyethylene, Phillips through a wholly-owned plant and National through its joint venture with Owens-Illinois, Inc. Both companies market low density polyethylene. National markets low density polyethelene resin produced at its wholly owned plant in Tuscola, Illinois. Thus, National markets low density polyethylene resin produced by both its wholly-owned plant and by the A-B joint venture. Phillips markets low density polyethylene resin produced by the A-B joint venture. Both companies have entered, or considered entering, a variety of polyolefin end-product markets, including plastic milk bottles, bags, fiber, and film. Each company has an extensive research staff and each for many years has regularly reviewed the feasibility of entering into the production and sale of many different ethylene-based and propylene-based products.

49. All sales, whether made by Phillips or National, of the products of Alamo and A-B tend to increase the profitability of the joint ventures. Thus, there exist economic and business inducements for Phillips and National to cooperate in achieving the maximum possible return for the joint venture and for each of the partners, in such ways as not competing for the same customers or not competing in the same end-product markets.

50. Prior to the formation of the A-B joint venture, Phillips considered the feasibility of entering into the production of low density polyethylene resin independently. Since the formation of the joint venture, however, Phillips has abandoned independent efforts to enter into such production. National, by the same token, has agreed with Phillips to refrain from undertaking any major expansion of the National-owned Tuscola plant; it has agreed, instead, to channel funds for growth into the jointly-owned A-B plant.

51. National urged that Phillips should acquire one or more substantial users of low density polyethylene resin, in order to insure that Phillips would absorb its share of the low density polyethylene resin produced by the A-B joint venture. Shortly thereafter, Phillips acquired the Mehl Company and the H. P. Smith Paper Company which together consumed over 20 million pounds of low density polyethylene resin.

52. Rather than enter separately into end-product markets for polypropylene, Phillips and National have cooperated to secure captive markets for the resin production of Alamo. They agreed on several occasions to advance additional funds to Alamo to finance such acquisitions. Moreover, prior to arranging the acqui-

sition of an interest in Gerfil Corporation by Alamo, Phillips had considered acquiring that interest independently. In the case of Wall Industries, Phillips sold to Alamo a company which it had itself previously acquired. National, for its part, sold to Alamo a film plant which it had built at Stratford, Connecticut.

53. In November 1962 Phillips and National agreed to conduct a series of joint market studies and to consult concerning the possible expansion of A-B into other products or the possibility of new joint ventures. Those joint market studies were carried out and when they indicated that polyvinyl chloride was the product market most suitable for new entry, Phillips and National agreed to enter that market jointly, in conjunction with Renolit, a German company with important patents and know-how in the polyvinyl chloride area.

B. Violations

54. The above-described explicit and implicit agreements among respondents constitute a conspiracy or combination to limit production, allocate markets, and avoid competition between them in the production or sale of the various polyolefin resins, their end-products, or other ethylene-based or propylene-based products, in violation of Section 5 of the Federal Trade Commission Act.

55. The continuing course of action by respondents, including the joint ventures, acquisitions, related agreements, and other actions taken by either to avoid competition with each other has substantially lessened, and has created economic inducements to the further substantial lessening of, actual and potential competition between Phillips and National in the United States in the production and/or sale of the various polyolefin resins, their end products, and other ethylene-based or propylene-based products, in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

The joint ventures, acquisitions, agreements and course of conduct described above thus constitute violations of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act, as amended, 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 the 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 Phillips Petroleum Company is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business at Bartlesville, Oklahoma.

Respondent National Distillers and Chemical Corporation is a corporation organized and existing under the laws of the State of Virginia, with its principal office and place of business at 99 Park Avenue, New York, New York.

Respondent Alamo Industries, Inc., formerly named Alamo Polymer Corporation, is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business at 4037 East Independence Boulevard, Charlotte, North Carolina.

Respondent A-B Chemical Corporation is a corporation organized and existing under the laws of the State of Texas, with its principal office and place of business at Deer Park, Harris County, Texas.

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

A. Dissolution of Alamo Industries, Inc., Joint Venture

I

It is ordered, That, within ninety (90) days from the effective date of this Order, National Distillers and Chemical Corporation (hereinafter referred to as "National") shall sell to Phillips Pe-

troleum Company (hereinafter referred to as "Phillips"), and Phillips shall purchase from National, capital stock, bonds, debentures, and other securities and interests held by National in Alamo Industries, Inc. (hereinafter referred to as "Alamo"), in accordance with Exhibit A.* After such purchase has been completed, Phillips shall comply with the terms of this Order which are applicable to Alamo.

II

It is further ordered, That, within two (2) years from the effective date of this Order, Alamo and/or Phillips shall divest absolutely and in good faith, to a purchaser or purchasers approved by the Federal Trade Commission, the facilities for the production of polypropylene resin known as the Monument Plant and located at Houston, Texas, including, but not limited to, all properties, machinery, equipment, raw material reserves, if any, and all contract rights pertaining to the operation of said facilities to the end that such divested facilities be established as a going concern and effective competitor in the manufacture and sale of polypropylene resins; that Phillips shall grant to the purchaser or purchasers of the aforesaid Monument Plant a license of polypropylene patents and know-how providing for a minimum annual royalty of \$200,000 for the first five (5) years, and otherwise at such royalty and upon such terms as were originally provided by Phillips' present license to Alamo; that Phillips shall continue to supply propylene feedstock to the Monument Plant for a term of three (3) years from the sale of the Monument Plant, or for such longer term as, with the approval of the Federal Trade Commission, the purchaser or purchasers may reasonably require, at prices not to exceed the current market price as determined from time to time and under a contract the same in form and substance as Phillips' present propylene supply contract with Alamo, except that the minimum annual quantity shall be 15 million pounds and the maximum annual quantity shall be 40 million pounds; and that Phillips or Alamo shall, at the option of such purchaser or purchasers, agree to manage and operate the aforesaid Monument Plant for such purchaser or purchasers upon such terms as provided by the management agreement now in effect between Phillips and Alamo, but in no event shall such management agreement be for a term of more than five (5) years; and that Phillips may require such purchaser or purchasers to enter into a contract

*Exhibit A omitted in printing.

with Phillips, upon reasonable terms and conditions, for the supply of polypropylene resin to cover the requirements of Alamo until Phillips has constructed, in accordance with paragraph III of this Order, a new polypropylene plant and until such new plant is in commercial production, or until Alamo has made other arrangements for its polypropylene supply, but in no event shall such contract be for a term of more than five (5) years.

III

It is further ordered, That, within three (3) years from the date of divestiture of the Monument Plant as ordered by paragraph II of this Order (if such divestiture is accomplished within the two (2) year period therein specified), Phillips shall construct, or cause one of its subsidiaries to construct, facilities for the production of polypropylene resin with a minimum annual rated capacity of 35 million pounds.

IV

It is further ordered, That, within two (2) years from the effective date of this Order, Alamo and/or Phillips shall divest absolutely and in good faith, to a purchaser or purchasers approved by the Federal Trade Commission, the synthetic film production and manufacturing facilities at Stratford, Connecticut heretofore purchased by Alamo from National, including, but not limited to, all properties, plants, machinery, equipment, raw material reserves, if any, and all contract rights pertaining to the operation of said facilities to the end that such divested facilities be established as a going concern and effective competitor in the manufacture and sale of synthetic film; and that National, to the extent that it is legally free to do so, shall grant to such purchaser or purchasers a license of the patents and know-how relating to synthetic film heretofore licensed to Alamo.

V

It is further ordered, That, within two (2) years from the effective date of this Order, Alamo and/or Phillips shall divest absolutely and in good faith, to a purchaser or purchasers approved by the Federal Trade Commission, the rope business of Alamo's subsidiary, Wall Industries, Inc. (hereinafter referred to as "Wall"), including, but not limited to, the plant located at Beverly, New Jersey, all machinery and equipment located in said plant, related marketing facilities, and all other properties, plants, machinery, equipment, trade names, contract rights,

trademarks and good will relating to said rope business, together with all improvements relating to said rope business, to the end that such business be established as a going concern and effective competitor in the manufacture and sale of rope; and that if, after two (2) years from the effective date of this Order, Alamo and/or Phillips have been unable to divest Wall's rope business as aforesaid despite *bona fide* efforts to do so, Alamo and/or Phillips shall divest such other assets of Wall as shall be necessary to effectuate the divestiture of such rope business.

VI

It is further ordered, That, within ninety (90) days from the effective date of this Order, Alamo shall sell to National, and National shall purchase from Alamo, all capital stock, bonds, debentures, other securities and all other interests held by Alamo in Beacon Manufacturing Company, in accordance with Exhibit A.*

VII

It is further ordered, That Phillips shall grant to National, at National's request made within five (5) years of the date of the aforesaid sale of Alamo's stock by National to Phillips, licenses to Phillips' and/or Alamo's polypropylene process and licenses under United States patents or know-how relating to products using polypropylene in accordance with Exhibit A,* to the end that National have available to it all necessary know-how and licenses under patents to enter, if it so desires, the polypropylene field.

B. Dissolution of A-B Chemical Corporation Joint Venture

VIII

It is further ordered, That, within ninety (90) days from the effective date of this Order, Phillips shall sell to National, and National shall purchase from Phillips, all the capital stock, bonds, debentures, other securities and all other interests held by Phillips in A-B Chemical Corporation (hereinafter referred to as "A-B"), in accordance with Exhibit B.*

IX

It is further ordered, That, within five (5) years from the effective date of this Order, Phillips shall enter independently into the production of low density polyethylene resin at a newly constructed plant with a minimum annual rated capacity of 140 mil-

*Exhibits A and B omitted in printing.

lion pounds. Phillips shall promptly initiate the steps necessary for construction of said plant, and shall continue to use its best efforts to construct such plant and to bring it into production at the earliest possible date.

X

It is further ordered, That National shall grant to Phillips, at Phillips' request made within five (5) years from the date of the aforesaid sale of A-B's stock by Phillips, and in connection with its construction of the low density polyethylene plant referred to in the preceding paragraph, a license to National's high pressure polyethylene process, in accordance with Exhibit B,* to the end that Phillips may utilize National's process, if it so desires, in its independent entry into the production of low density polyethylene resin.

XI

It is further ordered, That National shall take certain steps to establish in the low density polyethylene resin business any two firms or companies approved and/or chosen by the Federal Trade Commission, on terms and conditions set forth in the form of agreement annexed hereto as Exhibit C,* to the end that competition in low density polyethylene resin be fostered by entry of new producers: *Provided, however*, That if National shall have then granted a license to anyone covering National's high-pressure polyethylene process in the United States, its territories, possessions or Puerto Rico (other than to a licensee who is either already in the high-pressure polyethylene resin business using a process not directly or indirectly obtained from National or is a company at least 50% of whose voting stock is owned by National) upon more favorable scope, terms and conditions than those set forth in Exhibit C, then Exhibit C shall be amended to be not less favorable to the licensee than the most favorable license granted to such other licensee.

C. Dissolution of Atlantic Polymers, N.V. Joint Venture

XII

It is further ordered, That, within ninety (90) days from the effective date of this Order, Phillips shall sell to National, and National shall purchase from Phillips, all capital stock, bonds, debentures, other securities and all other interests held by Phillips

*Exhibits B and C omitted in printing.

in Atlantic Polymers, N.V. (a Belgian corporation now engaged in the construction of a plant for the production of polyethylene resin in Belgium), in accordance with Exhibit D.*

D. Divestiture of National's Interest in American Renolit Corporation

XIII

*It is further ordered, That, within ninety (90) days from the effective date of this Order, National shall sell to Phillips, and Phillips shall purchase from National, all capital stock, bonds, debentures, other securities and all other interests held by National in American Renolit Corporation (a Delaware corporation engaged in the production of polyvinyl chloride), in accordance with Exhibit E.**

E. Ban on Future Acquisitions and Joint Ventures

XIV

It is further ordered, That: (1) for a period of ten (10) years from the effective date of this Order, Phillips shall not acquire, directly or indirectly, through subsidiaries, joint ventures or otherwise, the whole or any part of the stock, share capital or assets (other than products sold in the course of business and patents, licenses or know-how) of any domestic concern theretofore engaged principally or as one of its major commodity lines in the manufacture, processing, conversion or sale of any polypropylene or low density polyethylene resin or fabricated product (except a concern the business activities of which in polypropylene or low density polyethylene are limited to processing, conversion or fabrication and which in the year prior to Phillips' acquisition accounted for total sales of polypropylene and high and low density polyethylene products not exceeding one million dollars (\$1,000,000)), without the prior approval of the Federal Trade Commission; and

(2) for a period of five (5) years from the effective date of this Order, Phillips shall not acquire, directly or indirectly, through subsidiaries, joint ventures or otherwise, the whole or any part of the stock, share capital or assets (other than products sold in the course of business and patents, licenses or know-how) of any domestic concern theretofore engaged principally or as one of its major commodity lines in the manufacture, process-

*Exhibits D and E omitted in printing.

ing, conversion or sale of any high density polyethylene resin or fabricated product (except a concern the business activities of which in high density polyethylene are limited to processing, conversion or fabrication and which in the year prior to Phillips' acquisition accounted for total sales of polypropylene and polyethylene products not exceeding one million dollars (\$1,000,000), without the prior approval of the Federal Trade Commission.

XV

It is further ordered, That: (1) for a period of ten (10) years from the effective date of this Order, National shall not acquire, directly or indirectly, through subsidiaries, joint ventures, or otherwise, the whole or any part of the stock, share capital or assets used in the manufacture or sale of high or low density polyethylene resin (other than products sold in the course of business and patents, licenses or know-how) of any domestic concern engaged (and in the case of joint ventures, to be engaged) principally or as one of its major commodity lines in the manufacture or sale of high or low density polyethylene resin, without the prior approval of the Federal Trade Commission;

(2) for a period of five (5) years from the effective date of this Order, National shall not acquire, directly or indirectly, through subsidiaries, joint ventures or otherwise, the whole or any part of the stock, share capital or assets (other than products sold in the course of business and patents, licenses or know-how) of any domestic concern theretofore engaged in the conversion, fabrication or sale of any high or low density polyethylene product where such concern, in the year prior to National's acquisition had total sales of polypropylene and high and low density polyethylene products in excess of five million dollars (\$5,000,000), without the prior approval of the Federal Trade Commission;

(3) for a period of five years (5) from the effective date of this Order, National shall not acquire, directly or indirectly, through subsidiaries, joint ventures or otherwise, the whole or any part of the stock, share capital or assets used in the manufacture or sale of polypropylene resin (other than products sold in the course of business and patents, licenses or know-how) of any domestic concern then or at any time in the past engaged principally or as one of its major commodity lines in the manufacture or sale of polypropylene resin, without the prior approval of the Federal Trade Commission; and

(4) for a period of five (5) years from the effective date of this

Order, National, if it shall have authorized entry into the business of producing polypropylene resin, shall not acquire, directly or indirectly, through subsidiaries, joint ventures or otherwise, the whole or any part of the stock, share capital or assets (other than products sold in the course of business and patents, licenses or know-how) of any domestic concern theretofore engaged in the conversion, fabrication or sale of polypropylene products where such concern, in the year prior to National's acquisition, had total sales of polypropylene and high and low density polyethylene products in excess of five million dollars (\$5,000,000) without the prior approval of the Federal Trade Commission.

XVI

It is further ordered, That, for a period of twenty (20) years from the effective date of this Order, Phillips and National shall cease and desist from engaging together, directly or indirectly, in any future joint ventures involving the manufacture, processing, conversion, fabrication or sale of any polyolefin or polyolefin product, without the prior approval of the Federal Trade Commission.

F. General Provisions

XVII

It is further ordered, That, pending divestiture or sale, respondents shall not make or permit any deterioration in any of the plants, machinery, building, equipment or other property or assets of the companies and plants described in this Order which may impair their present capacity or market value, unless such capacity or value is restored prior to divestiture or sale.

XVIII

It is further ordered, That in the event that respondents, despite *bona fide* efforts to do so, are unable to divest any or all of the facilities required to be divested by this Order or are unable to construct new plants in accord with this Order within the specified time, respondents may apply to the Federal Trade Commission at such time for relief from such obligations; and the Federal Trade Commission may issue such orders as it deems appropriate regarding such obligations and the disposition of facilities not yet divested.

XIX

It is further ordered, That: (1) within ninety (90) days from the effective date of this Order, Phillips, National and Alamo

shall report in writing to the Federal Trade Commission their compliance with paragraphs I, VI, VIII, XII and XIII of this Order;

(2) within ninety (90) days from the effective date of this Order, and every ninety (90) days thereafter until the divestitures required by paragraphs II, IV and V of this Order have been completed, Phillips and Alamo shall report in writing to the Federal Trade Commission their plans for effecting such divestitures and the actions they have taken in implementation thereof, including, in addition to such other information as may be required, (a) the name, address and official capacity of the individual or individuals designated to carry out each divestiture and to negotiate with interested parties, (b) a brochure, presentation or other writing containing all of the essential information necessary to permit an interested party to evaluate each of the businesses to be divested, including a description and listing of its assets, (c) the efforts made and to be made in advertising and affirmatively announcing the availability of each of the businesses to be divested, (d) the particular efforts made to locate and interest prospective purchasers not previously engaged in the industry, (e) a summary of contacts and negotiations relating to the sale of facilities ordered to be divested, including the identities of all parties expressing interest in the acquisition of any of the businesses to be divested and, subject to any legally recognized privilege, copies of all written communications pertaining to negotiations, offers to buy or indications of interest in the acquisitions of the whole or any part of any of the businesses to be divested, and (f) copies of all agreements and forms of agreement relating directly or indirectly to proposed sale of the whole or any part of the businesses to be divested.

(3) within ninety (90) days from the effective date of this Order, and every ninety (90) days thereafter until the terms of paragraphs III and IX of this Order have been complied with, Phillips shall report in writing to the Federal Trade Commission the steps it has taken to construct plants in compliance with such paragraphs.

Complaint

IN THE MATTER OF

THOMAS F. LUKENS METAL COMPANY ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-1089. Complaint, August 2, 1966—Decision, August 2, 1966

Consent order requiring a Philadelphia distributor of commercial solders to cease misrepresenting the tin content of its products.

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 Thomas F. Lukens Metal Company, a corporation, and Mitchell Steinberg, 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 Thomas F. Lukens Metal Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 2915 East Hedley Street, in the city of Philadelphia, State of Pennsylvania.

Respondent Mitchell Steinberg is an officer 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 offering for sale, sale and distribution of commercial solders including wire solders designated "50/50 by volume" and "40/60 by volume." Said solders are sold to retailers for ultimate 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 products, when sold, to be shipped from their place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States, and maintain, and at all