

DIAMOND CRYSTAL SALT CO.

Docket 7323. Opinion and Order, Dec. 9, 1969

Order reopening case and providing that Paragraph (4) of the order be modified to allow respondent to acquire a certain salt company noted in the first paragraph of the accompanying opinion.

OPINION OF THE COMMISSION

In January 1957, the respondent herein, a major dry salt producer, acquired control and ownership of another substantial dry salt producer, the Jefferson Island Salt Company. On December 2, 1958, the Commission issued a complaint against respondent charging that the acquisition violated Section 7 of the Clayton Act. On November 16, 1959, there was submitted to the hearing examiner an agreement between respondent and complaint counsel providing for entry of a consent order to cease and desist and to divest. The hearing examiner accepted the proposed order in an initial decision which was adopted as the decision of the Commission on February 4, 1960 [56 F.T.C. 818]. In addition to the provisions for divestiture and other provisions, the order prohibited respondent from acquiring for a ten-year period "any * * * interest in any corporation, in commerce, engaged in the business of producing and/or distributing salt in any form * * *."¹ Respondent now petitions the Commission to reopen this proceeding and modify the order so as to permit respondent to acquire a substantial interest in Compania Minera Santa Adriana, S.A. (Comisa), a Panamanian corporation, which "as its only significant asset holds marketable title to a vast, but largely undeveloped, rock salt deposit near Patillos, Chile."²

Respondent's request was placed on the public record and each salt producer in the United States was notified of the request by

¹ This provision, contained in Paragraph (4) of the order, was modified by the Commission on July 11, 1961 [59 F.T.C. 1481], to permit respondent to make certain acquisitions the details of which are not relevant to the present petition.

² Respondent's letter to the Commission dated September 23, 1969, received by the Commission on October 1, 1969, and treated herein as respondent's petition, p. 1. Specifically, respondent wishes to acquire "at a cost of \$3.00 per share, 189,000 shares of the authorized but unissued common capital stock" of Comisa, which amounts to approximately 42% of the company's then issued and outstanding capital stock. Respondent also intends to purchase, at par, up to \$750,000 worth of Comisa's convertible, subordinated debentures.

direct mailing. One of these producers, the Cayuga Rock Salt Company, Inc. (Cayuga), a competitor of respondent, has protested the proposed reopening and modification and requested that respondent's petition be denied. Complaint counsel, however, does not oppose granting respondent's request and has treated Cayuga's objections as not controlling. We agree with the result reached by complaint counsel; however, we believe that the objection raised against the request warrants a statement by the Commission of the reasons for its decision approving the request notwithstanding Cayuga's objection.

I

Respondent is the third largest American salt company.³ However, it controls only one rock salt (as distinguished from evaporated salt) production facility; this facility is located in Louisiana. Respondent alleges, and complaint counsel does not dispute, that it is unable, in these circumstances, to supply significant amounts of rock salt to customers located in the East Coast and Great Lakes areas of the United States. These markets are served, however, by respondent's two larger competitors, International Salt Company and Morton Salt Company, which own or control nearby rock salt production facilities. To enable respondent to compete more effectively in the East Coast rock salt market, respondent has consummated a rock salt requirements contract with Comisa under which respondent has agreed to purchase up to 1.95 million tons of rock salt produced at Comisa's Chilean mine for resale along the East Coast of the United States.⁴

Respondent's interest in the Comisa mines is not, however, restricted to its desire to compete more effectively in the East Coast and Midwestern markets. According to respondent, the absence of any rock salt deposits west of Kansas has heretofore been a bar to distribution of rock salt (as opposed to solar salt) to West Coast markets. Respondent believes, however, that:

The great and ever increasing demand for snow and ice removal rock salt in the eastern and mid-western states of the United States leads Diamond Crystal to believe that public acceptance of rock salt for this purpose on the west coast could be won if an intensive marketing effort was attempted. However, the time period required to obtain such market acceptance—and the costs and other risks involved—impel Diamond Crystal's management to

³ Petition, p. 2.

⁴ *Id.*, at p. 3.

the conclusion that the effort should not be made unless an equity position in Comisa can first be obtained.⁵

In short, acquisition by respondent of an equity interest in Comisa would provide respondent with certain access to Chilean rock salt supplies which would in turn enable it to become a more effective competitor in the East Coast market and open up the West Coast market for the first time to rock salt in competition with other products.

On the basis of the facts now before the Commission, we find no substantial objection to respondent's proposed acquisition insofar as it will enable respondent to distribute its product for the first time to the West Coast market. The objection which has been raised to respondent's petition relates to the East Coast market. At the present time there are, according to respondent, only three major suppliers of rock salt to the East Coast market (International Salt, Morton Salt, and respondent) and three lesser suppliers (Cayuga, Cargill, Inc., and Carey Salt Company).⁶ Cayuga has objected to respondent's petition on the ground that if respondent is able to "bring in and ship foreign salt into [the] Eastern Seaboard at such low costs * * * Cayuga * * * will be faced with serious loss of tonnage to our Eastern Atlantic Coast destinations." Cayuga goes further in its claim and states that if respondent engages in an anticipated "extended sales effort" on the basis of its low cost foreign salt, Cayuga "will be forced to discontinue mining rock salt; [sic] as we can not meet these low costs."⁷ In view of the small number of participants in this particular market and the apparently high concentration which prevails in the dry salt industry generally,⁸ such a

⁵ *Id.*, at p. 5.

⁶ *Id.*, at p. 6. It is worth noting the allegation in Paragraph 5(a) of the Commission's complaint herein that "The dry salt industry in the United States is highly concentrated in that the six largest dry salt producers, including Diamond Crystal and Jefferson Island, shipped in excess of three-fourth's of the total dry salt sold or used in the United States in 1955 * * *." [56 F.T.C. at 823.]

⁷ Letter from Cayuga to the Commission dated October 28, 1969. Cayuga also apparently has requested the Commission to undertake "an early review of present ever increasing imports of salt" into the United States. However, as complaint counsel suggests in the answer to respondent's petition, the desirability *vel non* of governmental regulation of salt imports is a matter which goes beyond the issues raised by respondent's petition and is not relevant to those issues or to any concern of the Commission in the present matter.

⁸ See note 6, *supra*.

claim warrants careful consideration. The possible elimination of one out of six participants in a given market is a factor which must be given weight in assessing the legality of a transaction which might lead to such a material reduction in the number of market forces. The Commission has, accordingly, weighed the potential risk to Cayuga incident to its granting respondent's request and concluded that, notwithstanding that risk, respondent's petition should be granted.

II

The gist of Cayuga's objection is that if respondent's petition is granted, respondent will be assured a low cost supply of foreign rock salt which will enable respondent to compete more effectively in the East Coast to the possible injury of Cayuga's participation in the market. No claim is made that respondent is seeking to obtain (or has the power to obtain) exclusive access to low cost rock salt. Indeed, Cayuga has provided the Commission with a table of imports of rock salt into the Eastern market for the past three years which indicates that the sources for foreign rock salt are numerous and that respondent is only one of many companies with access to imported salt in significant quantities. Moreover, there is nothing in the record before the Commission to suggest that, by obtaining an equity interest in Comisa, respondent will be foreclosing its competitors from a substantial share of any substantial market; see *Brown Shoe Co. v. U.S.*, 370 U.S. 294, at 323-324 (1962); *U.S. v. E. I. duPont de Nemours*, 353 U.S. 586, at 595 (1957). The rock salt deposits controlled by Comisa are, at the present time, largely undeveloped and respondent's proposed purchases will provide Comisa with the additional capital needed to exploit these deposits.⁹ In short, except for Cayuga's expressed fear that it may be unable to withstand the rigors of a legitimate competitive effort by respondent and may therefore be eliminated as a competitor in an already concentrated market, every aspect of the proposed transaction suggests palpable benefits to the competitive process. It will permit the development of a largely unexploited resource; enable respondent to compete more effectively in the East Coast market and enter a wholly new market on the West Coast; and it will have no foreseeable substantial adverse competitive impact on the production or distribution of rock salt or any other type of salt in the United States.

⁹ Petition, p. 2.

Against these benefits, the possible elimination of Cayuga from the marketplace, while warranting the consideration of the Commission, cannot be a decisive factor since it would spring, by Cayuga's own account, from wholly-lawful competitive factors. Cayuga's objection to respondent's petition cannot be sustained. No other reason appearing why respondent's petition should be denied, it is granted.

ORDER REPORTING PROCEEDING AND MODIFYING PREVIOUS ORDER

The respondent having filed a petition on October 1, 1969, which requests the Commission to reopen the proceeding herein and to modify its order so as to permit the respondent to purchase 189,000 shares of the authorized but unissued common capital stock of Compania Minera Santa Adriana, S.A., a Panamanian corporation, along with up to \$750,000 of said company's convertible subordinated debentures; and

The Commission having issued its decision in this proceeding on February 4, 1960 [56 F.T.C. 818], containing its order to divest and to cease and desist, which order, among other things and subject to an exception contained in a modification of the order made by the Commission on July 11, 1961 [59 F.T.C. 1481], prohibits the respondent from acquiring at any time during the ten years succeeding February 4, 1960, any interest in any corporation, in commerce, engaged in the business of producing and/or distributing salt; and

It appearing, for the reasons stated in the accompanying opinion and from the facts stated in the petition and in the answer filed by complaint counsel, who join in the request that the petition be granted, that there is no reasonable probability that any proscribed anticompetitive effects will result from the proposed purchase, and the Commission having further determined that the public interest will be served by reopening this proceeding solely for the purpose of altering and modifying the order so that it shall not prohibit the respondent from effectuating such acquisitions:

It is ordered, That this proceeding be, and it hereby is, reopened and that Paragraph (4) of the order to divest and to cease and desist be, and it hereby is, modified to read as follows:

(4) *It is further ordered*, That for a period of ten years from February 4, 1960, the respondent shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, by merger, consolidation, or purchase, the physical assets, stock, share capital of, or any other interest in