

Docket C-2175. . Complaint, March 22, 1972—Decision, March 22, 1972

Consent order requiring a British corporation, one of the world's largest chemical companies, to divest itself within three years of the explosives and

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aerospace divisions of a Wilmington, Del., corporation, and not to acquire for a period of 10 years any interest in an American explosive business without the approval of the Commission.

COMPLAINT

The Federal Trade Commission, having reason to believe that Imperial Chemical Industries, Ltd., a corporation subject to the Commission's jurisdiction by reason of the transaction hereinafter described, and its wholly-owned and controlled subsidiary, ICI-America, Inc., a corporation subject to the commission's jurisdiction, have acquired control of the capital stock of Atlas Chemical Industries, Inc., a corporation subject to the Commission's jurisdiction, in violation of Section 7 of the Clayton Act (15 U.S.C. §18), hereby issues its complaint, pursuant to Section 11 of that Act (15 U.S.C. § 21) stating its charges as follows:

I DEFINITIONS

1. As used in this complaint:

(a) "High explosives" refers to nitroglycerine based commercial explosives, including permissible explosives approved by the United States Bureau of Mines for use in certain underground mining operations, and excluding blasting accessories.

(b) "ANFO" refers to ammonium nitrate-fuel oil sensitized commercial explosives, including ammonium nitrate for use in such mixtures, and excludes slurries.

(c) "Slurries" refers to a commercial explosive in the form of a liquid or gel containing ammonium nitrate and a sensitizer such as TNT or aluminum.

(d) "Electric blasting caps" refers to delay and non-delay electric caps.

(e) "Blasting Accessories" refers to all accessories to the use of commercial explosives, including primers and detonating devices such as electric blasting caps and detonating fuse.

(f) "Commercial explosives" refer to high explosives, ANFO, and slurries.

(g) "Explosives business" refers to the business of manufacturing high explosives, ANFO, or slurries and in connection with the sale of such products of supplying a full line of commercial explosives and blasting accessories, and technical advice on the use of said products.

(h) "United States" includes all fifty states.

II THE COMPANIES

2. Atlas Chemical Industries, Inc., ("Atlas") was a corporation organized under the laws of the State of Delaware, with its principal office and place of business located in Wilmington, Delaware, and was one of the corporations formed as a result of the decree in *United States v. E. I. DuPont de Nemours & Co.*, 188 Fed. 127 (1911). It is now merged with ICI-America, Inc.

3. In 1970 Atlas had sales in excess of \$155 million and assets in excess of \$139 million. It ranked approximately 540th among the nation's largest industrial firms by sales.

4. Atlas was one of the six to eight companies in this country which are known as "powder companies" and which manufacture most of a full-line of explosives and blasting accessories, have a network of distributors, salesmen, and magazines, are able to supply field engineering services, and have an established record of safety and reliability. In 1970 Atlas' sales of explosives and blasting accessories (other than sales to other manufacturers) were approximately \$30 million, or approximately 15 percent of total domestic sales of such products and Atlas ranked second among companies making such sales. At all times relevant hereto Atlas sold and shipped its products throughout the United States and engaged in "commerce" as that term is defined in the Clayton Act.

5. (a) Respondent Imperial Chemical Industries, Ltd., ("ICI") is a corporation organized and existing under the laws of the United Kingdom.

(b) Together with its subsidiaries and affiliated companies (hereinafter referred to collectively as "ICI"), ICI had sales in 1970 in excess of \$3.5 billion, and its assets exceeded \$4.5 billion. It ranked approximately 6th in size among the largest industrial firms not based in this country. It would have ranked approximately 20th among the largest domestic industrial firms.

(c) Immediately prior to the acquisition, ICI imported a substantial quantity of goods into this country; it had investments valued in excess of \$300 million in domestic firms, one of which was its wholly-owned subsidiary, ICI-America, Inc. ("ICIA"), which investments generated in excess of \$100 million in sales in 1970. The activity above described continued after the merger. The acquisition of Atlas was planned, financed, and controlled by ICI.

6. Respondent ICIA is a corporation organized and existing under the laws of the State of Delaware, with its principal places of business in Stamford, Connecticut, and Wilmington, Delaware.

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7. Canadian Industries, Ltd., ("CIL") is a corporation organized and existing under the laws of Canada; approximately 74 percent of its stock is owned by ICI, and it is one of ICI's "subsidiary or affiliated companies" as that term is used in this complaint. In 1970 CIL had sales in excess of \$(C)300 million on assets exceeding \$(C)290 million. It ranks among the 25 largest manufacturing companies in Canada.

III THE ACQUISITION

8. On or about July 20, 1971, ICI, through ICIA, acquired all of the then issued and outstanding stock of Atlas, aggregating 4,089,893 shares, for \$40 per share, or \$163,595,720 (the "acquisition").

IV TRADE AND COMMERCE

9. (a) Outside the United States, ICI is one of the largest producers and marketers of commercial explosives and blasting accessories. Sales in the United Kingdom including exports exceeded \$38 million in 1970. Canadian sales through CIL exceeded \$40 million in 1970. CIL is the largest producer of explosives in Canada, producing and selling approximately 70 percent of all explosives sold in that country.

(b) Over a period of years, during which it has been one of the world's foremost suppliers of explosives, ICI has maintained long standing commercial relationships with large consumers of explosives outside the United States, including international mining companies.

10. (a) At least since 1967 ICI has competed with Atlas in the sale in this country of electric blasting caps. In 1970 approximately 4 percent of electric blasting caps sold in this country had been manufactured by ICI.

(b) CIL has sought to participate in the Alaska market for explosives through sale of a full-line of explosives in that state.

(c) Prior to the acquisition, ICI considered expanding its participation in the United States commercial explosives markets, in terms of volume of sales, variety of explosives sold, and areas of the country to which sales are made, and it has considered making such participation part of an explosives business conducted on a continental scale.

11. As a result of its long experience, extensive manufacturing facilities, established sales organization and customer relationships, and CIL's entrenched position in Canada, immediately prior to the acquisition ICI was one of the most likely potential entrants into the

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business of selling explosives in this country and of being a "powder company" in this country.

12. The relevant geographic markets involved in this complaint are the United States as a whole and regional areas containing a high proportion of explosives users in the construction and quarrying industries.

13. The relevant product market involved in this complaint is the explosives business. The relevant product sub-markets are:

- (a) Commercial explosives
 - (i) high explosives
 - (ii) ANFO
 - (iii) slurries
- (b) Blasting accessories
- (c) Electric blasting caps
- (d) Explosives sold to users in the Construction Industry.
- (e) Explosives sold to users in the Quarrying Industry.

14. The manufacture and sale of explosives is a significant business in the United States. During 1970 total domestic sales (other than sales to other manufacturers) amounted to approximately \$200 million. For that year, Atlas' rankings in the relevant markets were:

Market:	Atlas' ranking
Commercial explosives.....	3
High explosives.....	2
ANFO	4
Slurries	8
Blasting accessories.....	2
Electric blasting caps.....	2
Construction industry.....	2
Quarrying industry.....	2

15. The relevant markets and submarkets are marked by a high degree of concentration. In 1970 seven companies were substantial marketers of a full-line of explosives, three companies produced electric detonators, three companies produced detonating fuse, four companies produced over 85 percent of the high explosives (including ammonium nitrate sold for explosives use), and three companies produced over 80 percent of the slurries. In addition, a substantial quantity of the ANFO (including ammonium nitrate sold for explosives use) was sold by producers thereof to powder companies and their distributors, who then resold for use.

16. Entry into the manufacture of high explosives, slurries, and blasting accessories is difficult because the manufacturer must have a substantial investment in plant and equipment, due in part to economies of scale and/or the scarcity and complexity of the equip-

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ment, must have extensive manufacturing and handling know-how, and must have a reputation for safety.

(b) Entry into the sale of commercial explosives is difficult because of the prevalence of distribution through exclusive distributors, and because of the substantial competitive advantage enjoyed by the seller able to supply a full-line of commercial explosives and blasting accessories, to supply commercial explosives at manufacturer's prices, and to supply field engineering services.

V EFFECTS OF ACQUISITION

17. The effects of the acquisition of Atlas by ICI may be to substantially lessen competition or to tend to create a monopoly in the manufacture and sale of the relevant products and subproducts in the relevant geographic market and sub-markets in the following ways, among others:

(a) Actual competition between Atlas and ICI in the sale of electric blasting caps has been eliminated.

(b) Substantial potential competition by ICI has been eliminated in each relevant market and submarket.

(c) Barriers to entry will be increased and the effectiveness of competition by smaller firms will be diminished by the substitution of ICI for Atlas.

VI VIOLATION CHARGED

18. The acquisition of Atlas by ICI constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Section 18).

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violation of Section 7 of the Clayton Act, as amended;

Respondents, their attorneys 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 aforesaid draft of complaint, 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 alleged in said complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that respondents have violated the said Acts, and that complaint should issue stating its charges in that respect and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Imperial Chemical Industries, Ltd., a corporation which has its principal place of business in London, England.

2. Respondent ICI America, Inc., is the wholly-owned subsidiary of respondent Imperial Chemical Industries, Ltd., and is a corporation which has principal places of business at Stamford, Connecticut and Wilmington, Delaware.

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

ORDER

I

It is ordered, That respondents Imperial Chemical Industries, Ltd., and ICI-America, Inc., (hereinafter referred to collectively as "ICI"), their successors and assigns, shall as soon as possible divest themselves of the business conducted by the Explosives and Aerospace Components Divisions of Atlas Chemical Industries Inc. ("Atlas"), as hereinafter defined: *Provided, however*, That, with the approval of the Federal Trade Commission, the business conducted by the Aerospace Components Division of Atlas need not be divested. Such divestiture shall be accomplished no later than three years (3) from the service of this order and shall be subject to the prior approval of the Federal Trade Commission.

II

It is further ordered, That as used in the order "the business conducted by the Explosives and Aerospace Components Division of Atlas" means a viable and going business engaged in the research, manufacture, distribution and sale of commercial explosives and related products and, unless excluded pursuant to Paragraph I of

this order, of the product sold by the Aerospace Components Division, in the product lines in which said divisions were engaged at the time of Atlas' acquisition by ICI. Said business (hereinafter also referred to as "the business to be divested") includes all plant, equipment, real estate, inventory, customer accounts, lists and receivables, distributor agreements, leases, products, trademarks, technical and scientific know-how, patents, good will, all other assets, all liabilities and obligations (including obligations to the employees of the business at the time of divestiture) and all additions, improvements, replacements and withdrawals of real and personal property made in conformity with the provisions of Paragraph IV of this order until the date of divestiture, which are devoted to or arise in connection with the research, manufacture, distribution and sale of commercial explosives and of the products sold by the Aerospace Components Division of Atlas. In connection with the divestiture provided under Paragraph I of this order, ICI may, subject to the approval of the Federal Trade Commission, lease to the acquirer real estate underlying explosive magazines or distribution facilities, provided that upon termination of any lease ICI will not utilize said real estate in the conduct of any explosives business.

III

It is further ordered, That unless the divestiture required by this order has been accomplished with two (2) years of service of this order then as part of its compliance with Paragraph I of this order, ICI shall within said two (2) years cause to be incorporated a new company, hereinafter referred to as Atlas Powder Co., and shall transfers to that company the business to be divested, as defined in Paragraph II of this order, and ICI shall divest itself of all interests in Atlas Powder Co., pursuant to Paragraph I of this order.

IV

It is further ordered, That pending the divestiture required by this order,

(a) ICI shall cause the business to be divested and Atlas Powder Co., as the case may be to be operated in accordance with sound business practices and maintained at not less than the standards of operational performance in effect on the date of acquisition and in such manner as not to impair or adversely

affect its economic, competitive or financial condition. ICI shall not be required unreasonably to replace assets which are destroyed or seriously damaged or rendered unusable, either accidentally or by acts of God.

(b) ICI shall do everything within its power to assure that the business to be divested and Atlas Powder Co. as the case may be will remain properly staffed and that all reasonable means will be used to assist said business in retaining, rehiring or replacing key management and sales personnel needed for its operation. Subject to the approval of the Federal Trade Commission the acquirer of the divested business shall be required to extend to the employees of said business terms and conditions of employment and fringe benefits which are in the aggregate as favorable to such employees as those applicable at the time of divestiture.

(c) ICI shall not commingle its other assets, products or research with those of the business to be divested but pending divestiture ICI shall continue to provide to said business and to Atlas Powder Co. as the case may be the use of assets and personnel involved in the services such as were furnished on a corporate basis by Atlas to the Explosives and Aerospace Components Divisions at the time of acquisition.

v

It is further ordered, That ICI shall not for a period of three (3) years after the divestiture required by this order solicit the employment of, or without the prior written consent of the acquirer offer employment to or employ, any key personnel directly concerned with the divested business at the time of divestiture.

vi

It is further ordered, That no interest in the business to be divested or Atlas Powder Co. as the case may be, shall be sold or transferred, directly or indirectly, to any person who is, at the time of the divestiture, an officer, director, employee, or agent of, or under the direct or indirect control or direction of, ICI, any of ICI's subsidiary or affiliated companies, anyone who owns or controls, directly or indirectly, more than 1 percent of the outstanding shares of ICI or any of ICI's subsidiary or affiliated companies, or to anyone not approved in advance by the Federal Trade Commission.

VII

It is further ordered, That for a period commencing with the effective date of this order and continuing for ten (10) years thereafter, ICI, its successors and assigns, shall cease and desist from acquiring, directly or indirectly, without the prior approval of the Federal Trade Commission, the whole or any part of the stock, share capital, assets, any interest in, or any interest of, any domestic concern, corporate or non-corporate, engaged in the sale of commercial explosives, to the extent that such acquisition involves the domestic manufacture or sale of commercial explosives, nor shall ICI enter into any arrangement with an such concern by which ICI obtains the market share, in whole or in part, of such concern in the domestic sale of commercial explosives. ICI may acquire stock or assets of any existing distributor of the Explosives Division where such acquisition is necessary to carry out its obligations under Paragraph IV(a) of this order.

VIII

It is further ordered, That within forty-five (45) days from the date of service of this order and every six (6) months from such date until divestiture is accomplished, ICI shall submit, in writing, to the Federal Trade Commission a report setting forth in detail the manner and form in which ICI intends to comply, is complying or has complied with this order. All compliance reports shall include, among other things that are from time to time required, (a) the steps taken to accomplish the required divestiture and (b) copies of all documents, including reports, memoranda, and correspondence referring or relating to the divestiture. One year following the effective date of this order and each year thereafter during which Paragraph VII is in effect, ICI shall notify the Commission in writing whether any acquisition of the type referred to in Paragraph VII has been made by it, and shall furnish such information with respect thereto as may be requested by the Federal Trade Commission.

IX

It is further ordered, That ICI shall notify the Commission at least thirty (30) days prior thereto, of any proposed change in the corporate status of ICI which may affect compliance with obligations arising out of this order, such as dissolution, assignment, sale, the emergence of a successor corporation or the creation or dissolution of subsidiaries.

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IN THE MATTER OF

J. S. HOSIERY CO. INC., ET AL.

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

Docket C-2176. Complaint, March 22, 1972—Decision, March 22, 1972

Consent order requiring a New York City seller and distributor of textile fiber products, including ladies' scarves, to cease violating the Flammable Fabrics Act by importing and selling any fabric which fails to conform to the standards of said Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that J. S. Hosiery Co. Inc., a corporation and Blima Shajnfeld, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and rules and regulations promulgated under the Flammable Fabrics Act, as amended, 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 J. S. Hosiery Co. Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. It's address is 30 Orchard Street, New York, New York.

Respondent Blima Shajnfeld is an officer of the corporate respondent. She formulates, directs and controls the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are engaged in the sale and distribution of textile fiber products, including, but not limited to, ladies' scarves.

PAR. 2. Respondents are now and for some time last past have been engaged in the sale and offering for sale, in commerce, and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce, products as the terms "commerce" and "product" are defined in the Flammable Fabrics Act, as amended, which fail to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.