

CONSENT ORDER, 1974,
OF SECTION 7 OF THE CLAYTON ACT

Docket 8892. Complaint, June 29, 1972—Decision, Mar. 11, 1974

Consent order requiring a New York City producer of lead and zinc, among other things to cease acquiring, without prior Commission approval, any corporations engaged in the production or sale in the United States of more than 30,000 tons per year of lead ore or related lead products. This prohibition is in effect until Oct. 25, 1977.

¹ A motion to intervene should be made initially to the administrative law judge. However, inasmuch as the purpose for which intervention was sought here relates to an issue which had already been certified by the judge to the Commission, it seems to be in the interest of expedition for the Commission to consider the matter initially.

² This should not be taken as a judgment either way on the propriety of petitioner's participation as *amicus curiae* at some point in the proceeding, the traditional role accorded to those concerned with the precedential impact of adjudicative decisions.

Appearances

For the Commission: *K. Keith Thurman* and *James C. Egan*.

For the respondent: *Debevoise, Plimpton, Lyons & Gates*, New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that St. Joe Minerals Corporation, a corporation subject to the jurisdiction of the Commission, has acquired the stock, business and assets of Quemetco, Inc., a corporation in violation of Section 7 of the Clayton Act, as amended, (15 U.S.C. Section 18); and therefore, pursuant to Section 11 of said Act, issues this complaint stating its charges as follows:

I. DEFINITIONS

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

(a) "The U.S. lead market" consists of all primary lead and secondary lead produced in the U.S. and all imports of lead pigs and bars.

(b) "Primary lead" is refined lead and antimonial lead produced by the smelting and refining of ores and base bullion.

(c) "Domestic primary lead" is refined lead and antimonial lead produced in the United States by the smelting and refining of domestic ores and base bullion and foreign ores and base bullion.

(d) "Secondary lead" is lead recovered from scrap sources, such as scrap lead-acid type batteries.

II. ST. JOE MINERALS CORPORATION

2. Respondent, St. Joe Minerals Corporation (hereinafter "St. Joe"), is now, and was at the time of the acquisition alleged in this complaint, a New York corporation with its principal office and place of business located at 250 Park Avenue, New York, N.Y. On May 11, 1970, the name of respondent was changed from St. Joseph Lead Company to St. Joe Minerals Corporation.

3. In 1969, St. Joe had total sales of \$178,974,000 and assets of \$201,063,191; and was the 455th largest publicly held industrial corporation in the United States in terms of sales. In 1970, St. Joe had total sales of \$161,303,068 and total assets of \$210,483,936.

4. In 1969, St. Joe was the largest domestic producer of lead and zinc. St. Joe's lead mines are located in Southeastern Missouri and in 1969 accounted for 47.7 percent of domestic mine production of *recoverable* lead, *i.e.*, the tons of metal in concentrates.

5. At all times relevant herein, St. Joe has sold and shipped its products in interstate commerce through out the United States and was

and is engaged in commerce within the meaning of the Clayton Act, as amended.

III. THE ACQUISITION

6. On Dec. 29, 1970, St. Joe acquired Quemetco, Inc. (hereinafter "Quemetco") by the payment of \$13.50 for each outstanding share of common stock of Quemetco. The value of this payment was \$7.8 million.

IV. QUEMETCO, INC.

7. Quemetco is a California corporation with its principal office located at 720 South Seventh Avenue, City of Industry, Calif. Since the date of acquisition, Quemetco has been operated as a subsidiary of St. Joe. Prior to July 1970, the name of Quemetco, Inc. was Western Lead Products Company.

8. In 1970, Quemetco was a producer of secondary lead and lead and zinc oxides and alloys with operating facilities located in the States of Washington, Indiana, Texas and California and the Republic of Mexico. In that year, Quemetco operated secondary smelters in City of Industry, Calif.; Indianapolis, Ind.; and Seattle, Wash.

9. Quemetco's total sales for the fiscal year ending Mar. 31, 1970 were \$25,618,531. For the year ending Dec. 31, 1970, Quemetco's total sales were \$30,425,419.

10. At all times relevant herein, Quemetco has sold and shipped its products in interstate commerce throughout the United States and was and is engaged in commerce within the meaning of the Clayton Act, as amended.

V. TRADE AND COMMERCE

A. *The U.S. Lead Market*

11. In 1969, the U.S. lead market consisted of 1,537,190 short tons of lead produced by domestic primary and secondary lead refiners or imported as lead pigs and bars; and its value was \$443.1 million. In 1970, said market consisted of 1,515,353 short tons of lead produced by domestic primary and secondary lead refiners or imported as lead pigs and bars; at a value of \$473.4 million.

12. Prices in the U.S. lead market are posted in New York City by the leading primary lead producers. Such prices reflect the supply of lead from primary and secondary refiners and imports of lead pigs and bars.

13. The U.S. lead market is highly concentrated, with the top four firms accounting for 60 percent of total shipment in 1969 and 1970 by weight and the top eight firms accounting for over 70 percent of such total shipments.

14. The number of lead refiners in the U.S. declined from 1960 to 1970.

15. The barriers to entry into lead refining have increased significantly between 1960 and 1970.

16. St. Joe is the second largest supplier in the U.S. lead market. In 1969, St. Joe accounted for 15.2 percent of shipments in that market. In 1969, Quemetco was the seventh largest supplier of lead for said market and accounted for 1.6 percent of that market. In 1970, St. Joe and Quemetco accounted for 13.6 percent and 2.2 percent respectively of U.S. lead shipments.

B. The Primary Lead Market

17. In order to meet the U.S. lead consumption requirements, it is necessary to produce primary lead, as secondary supplies will not suffice to meet said requirements.

18. The refineries used for the production of primary lead differ substantially from those involved in refining secondary lead. Secondary refineries cannot be used to refine primary lead. Of the five domestic primary lead producers, only two operate any secondary refineries.

19. Many battery manufacturers prefer to use only primary lead in the production of lead oxide.

20. In 1969, total production of domestic primary lead was 654,905 short tons, which had a value of \$190.7 million. In 1970, total production of domestic primary lead amounted to 690,572 short tons, with a value of \$215.7 million.

21. In 1969, total sales of primary lead in the United States were 933,286 short tons. In 1970, total sales of primary lead in the United States were 935,128 short tons.

22. Concentration is extremely high in domestic primary lead refining. The top four firms accounted for 98 percent of 1969 and 1970 primary lead production by domestic refiners, and five firms accounted for all of 1969 and 1970 primary lead production by domestic refiners.

23. In 1969, St. Joe's U.S. operations smelted and refined 233,160 short tons of primary lead, which amounted to 35.6 percent of the total domestic production of primary lead. In 1970, St. Joe's U.S. operations smelted and refined 206,343 short tons of primary lead, which amounted to 29.3 percent of the total domestic production of primary lead in that year.

24. In 1968, Quemetco purchased 13,410 short tons of primary lead. Such purchases would represent 2.8 percent of domestic primary lead shipments or 1.6 percent of primary lead sales in the United States. In 1969, Quemetco was one of the largest purchasers of primary lead. In that year, its purchases were at least 18,810 short tons which would

represent 2.9 percent of domestic primary lead shipments or 2 percent of primary lead sales in the United States. By 1970, Quemetco's purchases of primary lead amounted to 23,429 short tons, which would represent 3.4 percent of domestic primary lead shipments or 2.5 percent of primary lead sales in the United States. By 1973-74, Quemetco's requirements of primary lead are projected to be even more substantial, representing 89,320 short tons or 13.6 percent of domestic primary lead shipments in 1970 and 9.5 percent of primary lead sales in the United States in 1970 and approximately the same percentage of estimated 1973-74 domestic primary lead shipments and primary lead sales in the United States.

C. The Battery Lead Oxide Market

25. The production of lead oxide for use in the manufacture of lead-acid type batteries is difficult, requiring a high degree of technical competence and quality control. Since the characteristics of the lead oxide determine the quality of the battery produced from it, lead-acid type battery manufacturers require rigid standards of quality from their lead oxide suppliers.

26. In 1969, battery lead oxide shipments in the United States were 302,160 short tons. The value of the lead used in making such lead oxides was \$90 million. By 1970, battery lead oxide shipments were 304,832 short tons; and the value of the lead used in making such lead oxides was \$95.2 million.

27. Quemetco is one of the few domestic suppliers of lead oxides for use in manufacturing batteries which is not owned by a battery manufacturer. NL Industries, Inc.; Hammond Lead Products, Inc.; and Quemetco are almost the only sources from which the small, non-integrated lead-acid type battery manufacturers can procure these essential lead oxides.

28. In 1969, Quemetco supplied 23,686 short tons of lead oxides used in the manufacture of lead-acid type batteries and accounted for 7.8 percent of such supply. In 1970, Quemetco supplied 29,824 short tons of lead oxides used in the manufacture of lead-acid type batteries and accounted for 9.8 percent of such supply.

29. In 1969, St. Joe was the principal supplier to lead-acid type battery manufacturers of lead used to produce lead oxides. In that year, its shipments of such lead were 80,960 short tons, 26.5 percent of the lead used in making lead oxides for use in batteries and 41 percent of the lead used by battery manufacturers in producing their own lead oxides. In 1970, St. Joe's shipments of lead to lead-acid type battery manufacturers for the production of lead oxides were 67,734 short tons and 22.2 percent of the lead used in making such lead oxides.

30. St. Joe was, at the time of the acquisition, one of the few most likely potential entrants into the production and sale of lead oxides for use in manufacturing batteries.

D. The Antimonial Lead Market

31. Antimonial lead is an alloy of lead and antimony used in the manufacture of ammunition and lead-acid type storage batteries. Its principal use is in the manufacture of grids for lead-acid type storage batteries. In 1969, 1.9 percent of antimonial lead was produced by domestic primary lead refiners, with the remaining production being recovered by secondary lead refiners. In 1970, 2.2 percent of antimonial lead was produced by domestic primary lead refiners.

32. In 1969, total U.S. production of antimonial lead was 342,475 short tons. In that year, the value of the lead contained in antimonial lead was \$102.3 million. In 1970, total U.S. production of antimonial lead was 340,000 short tons. The value of the lead contained in such antimonial lead was \$106.7 million.

33. Concentration in the domestic production of antimonial lead is high, with the top three firms in 1969 accounting for over 50 percent of such production. Furthermore, three of the largest refiners of antimonial lead are vertically integrated, using most of their production in their manufacture of lead-acid type storage batteries.

34. Quemetco's share of the antimonial lead market has been increasing. In 1968, total production of such antimonial lead was 308,563 short tons, of which Quemetco supplied 12,511 short tons or 4.1 percent. In 1969, Quemetco supplied 17,249 short tons of antimonial lead and accounted for 5 percent of domestic antimonial lead production. By 1970, Quemetco's shipments of antimonial lead amounted to 23,945 short tons which accounted for 7 percent of domestic antimonial lead production.

35. St. Joe produced 9,445 short tons of antimonial lead in 1968, accounting for 3.1 percent of domestic production. In 1969, St. Joe produced 3,560 short tons of antimonial lead and accounted for 1 percent of domestic production. All of St. Joe's production of antimonial lead in each of these years was sold to one firm which used such antimonial lead in the manufacture of ammunition.

36. Prior to its acquisition of Quemetco, St. Joe was one of the few most likely entrants into the sale of antimonial lead to battery manufacturers.

37. Prior to the acquisition of Quemetco by St. Joe, St. Joe had produced and sold dispersion strengthened lead and calcium lead for use in manufacturing grids for lead-acid type batteries. Sales of said dispersion strengthened lead and calcium lead by St. Joe to lead-acid type battery manufacturers has been at the expense of antimonial lead, and

dispersion strengthened lead and calcium lead may further displace antimonial lead as the primary ingredient in the production of grids for lead-acid type batteries.

VI. EFFECTS OF THE ACQUISITION

38. The effects of the acquisition of Quemetco by St. Joe may be substantially to lessen competition or to tend to create a monopoly in the production and sale of lead, primary lead, domestic primary lead, secondary lead, battery lead oxides and battery antimonial lead throughout the United States in violation of Section 7 of the Clayton Act, as amended, in the following ways among others:

(a) Substantial actual competition between two of the leading firms in the production of lead has been eliminated.

(b) Actual and potential producers of primary lead, other than St. Joe, have been and may be foreclosed now and in the future, from a significant purchaser of primary lead.

(c) Actual and potential producers of domestic primary lead, other than St. Joe, have been and may be foreclosed now and in the future, from a significant purchaser of primary lead.

(d) The dominant position of St. Joe in the primary lead market and the domestic primary lead market is strengthened.

(e) The already high barriers to entry into domestic primary lead production are raised by depriving potential entrants of a large customer, Quemetco, and increasing the need for vertical integration to secure a market for primary lead.

(f) St. Joe has been eliminated as a likely independent entrant into the highly concentrated sale of lead oxides to lead-acid type battery manufacturers, thereby depriving small lead-acid type battery manufacturers of the benefits of significant potential competition and thus lessening their ability to compete with the major battery manufacturers.

(g) St. Joe has been eliminated as an actual and potential competitor in the highly concentrated sale of antimonial lead, particularly the sale to lead-acid type battery manufacturers.

VII. THE VIOLATION CHARGED

39. The acquisition of the stock of Quemetco, Inc. by respondent, St. Joe Minerals Corporation, constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Section 18).

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereto with violation of Section 7 of the

Clayton Act, as amended, and the respondent having been served with a copy of that complaint, together with a proposed form of order; and

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

The Commission having thereafter withdrawn this matter from adjudication upon joint motion of the parties and in accordance with Section 2.34(d) of its rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed 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 makes the following jurisdictional findings, and enters the following order:

1. Respondent St. Joe Minerals Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 299 Park Avenue, in the city of New York, State of New York.

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

I

It is ordered, That for a period commencing with the effective date of this order and continuing until the expiration of 5 years from Oct. 25, 1972, St. Joe Minerals Corporation, its subsidiaries, successors and assigns or any concern controlled by a concern which is in control of St. Joe Minerals Corporation shall cease and desist from acquiring or agreeing to acquire directly or indirectly without the prior approval of the Federal Trade Commission ("Commission") all or any part of the stock or share capital, operating assets in excess of \$800,000 in any twelve month period, or any interest in or any interest of any one or more concerns, corporate or non-corporate, engaged in the year preceding the acquisition in the production or sale in the United States of more than 30,000 tons per year (in lead content of the concern's end product) of lead ore, lead concentrates, primary lead, secondary lead, lead oxides or lead alloys or any combination thereof, or from entering into any

arrangements with any such concern by which St. Joe Minerals Corporation obtains the United States market share in whole or in part of such concern in the above-described products, *Provided, however*, That nothing in this paragraph shall prevent the acquisition of, or of any interest in, mines which are not in production, mineral reserves or other mineral properties which are not being mined, or mines or other operating assets whose production is not being sold directly or indirectly in the United States.

It is further provided, That the term interest as used in this paragraph shall not apply to either (1) a debt interest or a security interest acquired incident to a sale or (2) an interest arising out of the conversion of a debt or security interest acquired incident to a sale, if disposed of within 12 months after such conversion.

II

It is further ordered, That on Oct. 25, 1973, and on each anniversary date thereafter until the expiration of the prohibitions in Paragraph I of this order St. Joe Minerals Corporation shall submit a report in writing to the Commission listing, for the year preceding such date, all its acquisitions of, mergers with, and agreements to acquire or merge with any concern engaged in the production or sale in the United States of any of the products listed in Paragraph I; the date of each such acquisition, merger or agreement; the products involved and such additional information as may from time to time be required.

III

It is further ordered, That St. Joe Minerals Corporation shall notify the Commission at least 30 days prior to any proposed changes in its corporate status which may affect compliance obligations arising out of the order such as dissolution, assignment or sale resulting in the emergence of successor corporations and that this order shall be binding on any such successor.

IN THE MATTER OF

ATLANTIC HOSIERY MILLS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATIONS
OF THE FEDERAL TRADE COMMISSION AND TEXTILE FIBER
PRODUCTS IDENTIFICATION ACTS

Docket C-2491. Complaint, March 13, 1974—Decision, March 13, 1974

Consent order requiring a Hialeah, Fla., marketer of ladies' hosiery and related products, among other things to cease misbranding and mislabeling its textile fiber products;