

IN THE MATTER OF
NEWMONT MINING CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT, AND SEC. 8
OF THE CLAYTON ACT

Docket C-2687. Complaint, July 17, 1975-Decision, July 17, 1975

Consent order requiring a New York City energy company, among other things to
cease permitting any individual to serve on its board of directors if such
individual is or would be at the same time a director of Amerada Hess Corp.

Appearances

For the Commission: *Robert B. Greenbaum.*

For the respondent: *Edwin M. Zimmerman, Covington & Burling,*
New York City.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above named respondents have violated the provisions of Section 8 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the interest of the public, issues this complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Amerada Hess Corporation is a corporation organized and existing under and by virtue of the laws of the State of Delaware, maintaining its principal place of business at 1185 Avenue of the Americas, New York, N.Y. At all times relevant to this complaint, Amerada Hess had capital, surplus, and undivided profits aggregating in excess of \$26 million. In 1972, Amerada Hess had revenues of approximately \$1 billion.

PAR. 2. Respondent Newmont Mining Corporation is a corporation organized and existing under and by virtue of the laws of the State of Delaware, maintaining its principal place of business at 300 Park Ave., New York, N.Y. At all times relevant to this complaint, Newmont

Mining Corporation had capital, surplus, and undivided profits aggregating in excess of \$44 million. In 1972, it had revenues of approximately \$272 million.

PAR. 3. In 1968 William B. Moses, Jr., was elected to the board of directors of Amerada Hess and has served in that capacity from the time of his election to and including the date of this complaint. In 1966 he was elected to the board of directors of Newmont Mining, and he has been a director of Newmont Mining from that time to and including the date of this complaint. On Nov. 25, 1974, Mr. Moses tendered his resignation from the board of directors of Amerada Hess, said resignation to be effective on the date of the Commission's entry of a consent order.

PAR. 4. The business of respondents Amerada Hess and Newmont Mining encompasses, but is not limited to the exploration, production, and sale of crude petroleum and natural gas.

PAR. 5. (a) Amerada Hess and Newmont Mining Corporation by the nature of their business and location of operations are competitors of each other with respect to the exploration, production, and sale of crude petroleum and natural gas.

(b) The elimination of competition by agreement or otherwise between Amerada Hess and Newmont Mining would hinder, foreclose, and restrain competition or tend to create a monopoly in the exploration, production, and sale of crude petroleum and natural gas.

PAR. 6. (a) The activities referred to in Paragraph Four are performed by corporate respondents in various States of the United States and products of those services are sold and distributed in various States.

(b) Amerada Hess and Newmont Mining each engages in commerce as that term is defined in the Clayton Act and the Federal Trade Commission Act.

PAR. 7. The director interlock, as herein above alleged, constitutes a violation of Section 8 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereto with violation of the Federal Trade Commission Act, and the respondent 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 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 to issue herein, 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 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 sixty (60) days, and having duly considered the comment filed thereafter pursuant to Section 2.34(b) of its rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, in the form contemplated by said agreement, makes the following jurisdictional finding, and enters the following order:

1. Respondent, Newmont Mining Corporation (Newmont), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 300 Park Ave., New York, N.Y.

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

ORDER

I

It is ordered, That Newmont Mining Corporation (Newmont) its successors and assigns, do forthwith cease and desist from permitting any individual to serve on its board of directors if such individual is or would be at the same time a director of Amerada Hess Corporation.

II

It is further ordered, That Newmont shall, within thirty days after service of this order, and annually for a period ending five (5) years thereafter, request from each member of its board of directors a written statement which discloses the name, business, and location of operations of each other corporation of which such member is also a director, exclusive of any corporation in which Newmont controls directly or indirectly through subsidiaries, more than 50 percent of the voting stock; exclusive of any corporation which derives annual gross revenues of less than \$1 million from the exploration, production and sale of natural gas and crude petroleum; and exclusive of any corporation not engaged in "commerce" as defined in Section 1 of the

Clayton Act as amended or Section 4 of the Federal Trade Commission Act.

III

It is further ordered, That for a period ending five (5) years after service of this order, Newmont at least thirty (30) days prior to any directors' meeting at which one or more directors will be elected or the mailing of proxy statements for any shareholder meeting at which one or more directors will be elected, request from each person who is being considered as a member of the board of directors, but has not been a member of the board of directors during the previous year, a written statement which discloses the information described in Paragraph II.

IV

It is further ordered, That for a period ending five (5) years after service of this order, Newmont shall not permit on its board of directors any person who fails to submit a written statement pursuant to Paragraphs II and III or any person who is a director of another corporation named in response to the statements required pursuant to Paragraphs II and III when said statement reveals or when a reasonably diligent investigation would reveal to respondent that such other corporation is a competitor of Newmont by virtue of its business and location of operation in the exploration, production or sale of crude petroleum or natural gas. If compliance with Paragraphs I and IV requires any member of Newmont's board of directors to resign or to be removed from the board of directors of either Newmont or such other corporation, Newmont shall be allowed a reasonable period of time within which to take any legal or other steps which are necessary to secure compliance with this order.

V

It is further ordered, That Newmont notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent which may affect compliance obligations arising out of this order, such changes to include, but not be limited to, dissolution, assignment or sale resulting in the emergence of a successor corporation.

VI

It is further ordered, That respondent Newmont shall, within thirty (30) days after service upon it of this order, file with the Commission a

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report, in writing, setting forth in detail the manner and form in which it has complied with this order, and shall within sixty (60) days submit copies of those lists provided by all current directors of Newmont pursuant to Paragraphs II and III designating all other corporations of which they are directors.
