

IN THE MATTER OF

THE ANACONDA COMPANY

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

Docket 8994. Complaint, Sept. 23, 1974—Decision, Jan. 23, 1976

Consent order requiring a New York City manufacturer and seller of primary metals and wire mill products to divest itself of the stock and assets of Systems Wire and Cable, Inc., a manufacturer of semiflexible coaxial cable within two years of service upon them of this order. Further, respondent is prohibited from acquiring, for a period of ten (10) years, the stock or assets of any firm engaged in the manufacture of semiflexible coaxial cable without prior F.T.C. approval.

Appearances

For the Commission: *Charles W. Corddry, III* and *Paul N. Kane*.

For the respondent: *Zachary Shimer, Chadbourne, Parke, Whiteside & Wolff*, New York City.

COMPLAINT

The Federal Trade Commission, having reason to believe that The Anaconda Company, a corporation subject to the jurisdiction of the Commission, has acquired all the stock of Systems Wire & Cable, Inc., a corporation, in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. §18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45), and that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. §21) and Section 5 of the Federal Trade Commission Act (15 U.S.C. §45 (b)), stating its charges as follows:

I

DEFINITIONS

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

(a) "*Coaxial cable*" is cable consisting of a metal center conductor, surrounded by an insulating material, or dielectric, and encased in a metal outer conductor which has a common axis with the center conductor. Coaxial cable is often coated by a polyethylene jacket or other protective covering.

(b) "*Semiflexible coaxial cable*" is coaxial cable sold on reels in

standard lengths of 2,000 feet and longer, with outer conductors of seamless, welded, wrapped or folded metal tubing, and outer diameters 1 inch or smaller.

II

RESPONDENT

2. Respondent, The Anaconda Company (hereinafter "Anaconda") is now, and was at the time of the acquisition hereinafter set forth, a corporation organized and existing under and by virtue of the laws of the State of Montana, with its principal office and place of business located at 25 Broadway, New York, New York.

3. In 1972 Anaconda had revenues of over \$1 billion and assets of \$1.6 billion. In that year it was the 138th largest publicly held industrial corporation in the nation in total sales and revenues and ranked 69th in assets.

4. Anaconda, prior to and following the acquisition hereinafter set forth, was and is a large vertically integrated corporation with numerous subsidiaries and affiliates. Anaconda is the third largest producer of copper, and, through a wholly-owned subsidiary, is among the ten largest producers of aluminum, in the United States. Principal products manufactured and sold by Anaconda and its subsidiaries include primary metals and wire mill products. Anaconda represents itself as having the resources and capability in the wire and cable industry to process materials from "mine-to-consumer."

5. Anaconda Wire and Cable Company (hereinafter "Anaconda W&C") was at the time of the acquisition hereinafter set forth a corporation organized and existing under and by virtue of the laws of the State of Delaware. Anaconda W&C at the time of the acquisition hereinafter set forth was a wholly-owned subsidiary of Anaconda and was operated under the direction and control of Anaconda. Anaconda W&C was merged into Anaconda on or about December 28, 1972 and is now a division of Anaconda. Anaconda W&C, prior to and following the acquisition hereinafter set forth, manufactured and sold wire mill products including semiflexible coaxial cable.

6. At all times relevant herein, Anaconda and Anaconda W&C sold and shipped their products in interstate commerce throughout the United States, and were and are now engaged in commerce as "commerce" is defined in the Clayton and Federal Trade Commission Acts.

III

SYSTEMS WIRE & CABLE, INC.

7. Prior to the acquisition hereinafter set forth, Systems Wire & Cable, Inc. (hereinafter "Systems") was a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 3500 South 30th St., Phoenix, Arizona.

8. In 1972, Systems had revenues of approximately \$5 million and assets of approximately \$2 million.

9. Incorporated in 1969, Systems was, prior to the acquisition hereinafter set forth, an aggressive, independent and profitable company. In 1972, approximately 60 percent of Systems' sales were of semiflexible coaxial cable manufactured by it.

10. At all times relevant herein, Systems sold and shipped its products in interstate commerce throughout the United States, and was and is now engaged in commerce as "commerce" is defined in the Clayton and Federal Trade Commission Acts.

IV

THE ACQUISITION

11. On or about December 27, 1972, Anaconda W&C, acting under the direction and control of Anaconda and pursuant to an agreement with the shareholders of Systems, acquired all of the outstanding stock of Systems. To consummate the acquisition, Anaconda issued 165,000 shares of Anaconda common stock at an approximate value of \$3 million to the shareholders of Systems. The acquisition was negotiated and consummated in commerce, as "commerce" is defined in the Federal Trade Commission Act.

V

TRADE AND COMMERCE

12. The relevant geographic market is the United States as a whole.

13. The relevant product market is the manufacture and sale of semiflexible coaxial cable. Rigid coaxial cable is coaxial cable having an air dielectric which is sold in straight pieces, 20 feet or less in length, with outer diameters of 7/8 inch or more, and which is not designed to be bent. Flexible coaxial cable is coaxial cable with a metallic braid or foil outer conductor which permits a smaller bending radius than does the outer conductor tubing of semiflexible coaxial cable. Because of differences in manufacturers, production facilities, prices, customers,

characteristics and uses and on the basis of industry recognition, semiflexible coaxial cable is readily distinguishable from flexible and rigid coaxial cable.

14. Sales of semiflexible coaxial cable in the United States are substantial, amounting to approximately \$28 million in 1972.

15. The primary user of semiflexible coaxial cable is the cable television industry, which has grown from 70 systems with 14,000 subscribers in 1952 to 2,750 systems and 5.9 million subscribers in 1972. New subscribers were added at a rate of 80,000 per month in 1972, and industry revenues were about \$350 million.

16. Concentration in the manufacture and sale of semiflexible coaxial cable is high, with the four and eight top ranking firms accounting in 1972 for more than 75 percent and 96 percent of domestic sales, respectively. In that year, 10 firms were engaged in the manufacture and sale of semiflexible coaxial cable in the United States.

17. Entry into the manufacture and sale of semiflexible coaxial cable is difficult, requiring large financial resources, sophisticated technological skills, precise quality control and an effective distribution system. Few firms possess such prerequisites for entry.

18. In 1972, Anaconda W&C was the sixth ranked domestic producer of semiflexible coaxial cable with sales of \$1.61 million. In that year, Anaconda W&C accounted for approximately 5.8 percent of total domestic sales of semiflexible coaxial cable.

19. In 1972, Systems was the fourth ranked domestic producer of semiflexible coaxial cable with sales of \$3.02 million. In that year, Systems accounted for approximately 11.1 percent of total domestic sales of semiflexible coaxial cable.

20. As a result of the aforesaid acquisition, Anaconda W&C became the third ranking firm in the semiflexible coaxial cable market, accounting for approximately 16.9 percent of total domestic sales of semiflexible coaxial cable as of the end of 1972. As a result of such acquisition, concentration among the top four firms in the relevant market increased from 75.8 percent to 81.6 percent.

21. Prior to the aforesaid acquisition, Anaconda W&C and Systems were substantial and actual competitors in the manufacture and sale of semiflexible coaxial cable.

VI

EFFECTS OF THE ACQUISITION

22. The effect of the aforesaid acquisition may be substantially to lessen competition or to tend to create a monopoly in the manufacture

and sale of semiflexible coaxial cable throughout the United States in the following ways, among others:

- a. Substantial actual competition between Anaconda and Systems has been eliminated;
- b. The restraining influence of Systems as a substantial, independent competitor has been eliminated;
- c. Concentration in the manufacture and sale of semiflexible coaxial cable has been increased to the detriment of actual as well as potential competition;
- d. Additional mergers and acquisitions in the relevant market may be encouraged;
- e. The combination of Anaconda W&C and Systems may so increase Anaconda's manufacturing and sales capability in the relevant market as to provide it with a decisive competitive advantage in the relevant market to the detriment of actual and potential competition.

VII

THE VIOLATIONS CHARGED

23. The acquisition by Anaconda W&C, acting under the direction and control of Anaconda, of Systems constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. §18).

24. The acquisition by Anaconda W&C, acting under the direction and control of Anaconda, of Systems constitutes an unfair method of competition in commerce and an unfair act or practice in commerce in violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45).

DECISION AND ORDER

The Commission having issued its complaint charging that the respondent named in the caption hereof has violated the provisions of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45) and Section 7 of the Clayton Act, as amended (15 U.S.C. §18); and

Respondent and complaint counsel, by joint motion filed June 18, 1975, having moved to have the matter withdrawn from adjudication for the purpose of submitting an executed consent agreement; and

The Commission, by order issued July 8, 1975, having withdrawn this matter from adjudication pursuant to Section 3.25(c) of its Rules; and

The executed agreement containing a consent order, an admission by 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 the complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered and provisionally accepted the agreement, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, and no public comments having been received, now in further conformity with the procedure prescribed in Section 3.25(d) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent, The Anaconda Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Montana, with its office and principal place of business located at 25 Broadway, New York, New York.

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, subject to the prior approval of the Federal Trade Commission, respondent, through its officers, directors, agents, representatives and employees shall, as soon as possible, and in any event within two (2) years from the date of service upon it of this order, divest absolutely and in good faith, all assets, properties, rights and privileges, tangible and intangible, presently owned or controlled by or hereafter assigned to Systems Wire and Cable, Inc. (excluding, however, receivables and inventories and any equipment, machinery, or other property presently located at Rome, New York) including but not limited to the plant operated by respondent and located at 3500 South 30th St., Phoenix, Arizona (hereinafter the "Plant") and all machinery, equipment and other property of whatever description located at the Plant and all customer lists, trade names, trademarks and good will acquired as a result of its acquisition of Systems Wire and Cable Inc., and all additions and improvements thereto of whatever description (hereinafter "Systems"), to a person, firm or corporation willing and able to operate the business now operated by Systems as a separate, independent and viable going concern in the manufacture and sale of semiflexible coaxial cable; *provided, however*, that if by the end of said two (2) year period respondent, after having made bona fide efforts to do so, has been unable to make such divestiture to a person, firm or corporation acceptable to the Federal Trade Commission then respondent shall be relieved of its obligation hereunder to make such

divestiture, and shall be free to dismantle the Plant and dispose of it or any part thereof.

II

It is further ordered, That, if respondent is unable to sell or dispose of Systems for cash, nothing in this order shall be deemed to prohibit respondent from retaining, accepting and enforcing in good faith any security interest therein, not to exceed five (5) years in duration, for the sole purpose of securing to respondent full payment of the price, with interest, at which Systems is sold or disposed of; *provided, however*, that if after a good faith divestiture of Systems pursuant to this order, respondent reacquires any of the divested assets by virtue of such security interest, respondent shall redinvest such assets within six (6) months subject to the terms of Paragraph I of this order.

III

It is further ordered, That none of the assets, rights or privileges to be divested pursuant to Paragraph I above, shall be transferred, directly or indirectly, to anyone who at the time of such divestiture is an officer, director, employee, or agent of, or under the control, direction or influence of respondent or any of its subsidiaries or affiliated corporations, or who owns or controls more than one (1) percent of the outstanding shares of respondent's capital stock.

IV

It is further ordered, That pending divestiture, respondent shall not make any changes, other than in the ordinary course of business, or permit any deterioration in Systems which may impair its capacity for the manufacture, distribution or sale of semiflexible coaxial cable; *provided, however*, that nothing in this order shall prevent respondent from exercising reasonable business judgment with respect to conducting the business and operations of Systems pending divestiture, including the discontinuance of all operations at the Plant.

V

It is further ordered, That respondent shall cease and desist for the period beginning on the date of service of this order and ending ten (10) years thereafter from acquiring, directly or indirectly, without prior approval of the Federal Trade Commission, one (1) percent or more of the stock or other share capital, of any domestic concern, corporate or non-corporate, which is engaged in the manufacture in the United

States of semiflexible coaxial cable, or capital assets from such a concern pertaining to the manufacture of such cable.

VI

It is further ordered, That respondent shall within sixty (60) days after date of service of this order, and every sixty (60) days thereafter until respondent has fully complied with the provisions of Paragraphs I and IV of this order, submit in writing to the Federal Trade Commission a verified report setting forth in detail the manner and form in which respondent has endeavored to comply with such provisions. All compliance reports shall include, among other things that are from time to time required, a summary of contracts or negotiations with anyone for the property and assets specified in Paragraph I of this order and the identity of all such persons and copies of all written communications to and from such persons. Respondent shall within one (1) year from the date of service of this order, and every year thereafter until respondent has fully complied with the provisions of Paragraph V of this order, submit in writing to the Federal Trade Commission a verified report setting forth the manner and form in which respondent has complied with Paragraph V of this order.

VII

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other proposed change in the corporation, which may affect compliance obligations arising out of this order.

IN THE MATTER OF

COPE ENTERPRISES, LTD., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2783. Complaint, Jan. 23, 1976—Decision, Jan. 23, 1976*

Consent order requiring a Brooklyn, N.Y., distributor of batteries and cosmetics, among other things to cease misrepresenting the high potential earnings of distributors; the type and number of sales locations the respondents would secure for distributors; the availability of training, business assistance, sales aids and advertising; the product line to be added; and the history of the company. Further, respondents are required to make refunds to requesting distributors and to disclose to prospective franchisees their right to cancel the agreement and obtain a full refund within ten (10) days of signing the agreement.

Appearances

For the Commission: *Sandra L. Bird* and *Sandra L. Grayson*.

For the respondents: *Soloman Z. Ferziger*, New York City and *Marvin Wolinetz*, Brooklyn, N.Y.

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 Cope Enterprises, Ltd., a corporation, Andrew Montero, individually and as an officer of said corporation, and Stanley Fuchs, individually and as former sales manager of said corporation, hereinafter sometimes 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 Cope Enterprises, Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. It formerly maintained its principal office and place of business at 2701 Avenue U, Brooklyn, New York.

Respondent Andrew Montero is an officer of the corporate respondent, Cope Enterprises, Ltd. He formulates, directs and controls the policies, acts and practices of the corporate respondent including those hereinafter set forth. His business address was the same as that of said corporation and his home address is 3626 Kings Hwy., Brooklyn, New York.

Respondent Stanley Fuchs was the sales manager of the corporate