

IN THE MATTER OF
RHINECHEM CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF
THE CLAYTON ACT

Docket 9116. Complaint, Aug. 23, 1978 — Decision, June 6, 1979

This consent order, among other things, requires a New York City manufacturer and seller of organic pigments to terminate all agreements providing for the acquisition of the Chemetron Corporation's organic pigments business; return all confidential documents exchanged during the negotiations; and provide the Commission with evidence of its compliance with these requirements. Additionally, respondent is required, until December 31, 1981, to furnish the Commission with 90-days' advance notice should the firm seek to acquire Chemetron's organic pigment business, or sell its own organic pigment business to Chemetron or Chemetron's corporate parent, Allegheny Ludlum Industries, Inc.

Appearances

For the Commission: *Glenn M. Fellman, Michael P. Waxman, John M. Peterson and Benita A. Sakin.*

For the respondents: *Thomas L. VanKirk, Buchanan, Ingersoll, Roderwald, Kyle & Buerger, Washington, D.C. and H. Blair White, Sidley & Austin, Chicago, Ill.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents, each subject to the jurisdiction of the Commission, have entered into a merger agreement which, if consummated, would violate 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; that said agreement constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended; and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act, 15 U.S.C. 21, and Section 5(b), of the Federal Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows:

Definition

For purposes of this complaint the following definition shall apply:
Organic pigments - insoluble color particles characterized by a chemical composition which includes carbon rings or chains as the

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basic part of their molecular structure and used to impart color to a variety of materials.

Rhinechem Corporation

1. Rhinechem Corporation (Rhinechem) is a corporation organized under the laws of the State of Delaware, with its principal place of business at 425 Park Ave., New York, New York.

2. Rhinechem is a wholly-owned subsidiary of Bayer International Finance N.A. which in turn is a wholly-owned subsidiary of Bayer Aktiengesellschaft (Bayer), a West German corporation with headquarters in Leverkusen, West Germany.

3. Bayer manufactures and sells organic pigments and organic pigment formulations throughout the world.

4. Rhinechem, through its wholly-owned subsidiaries, Mobay Chemical Corporation (Mobay) and Harmon Colors Corporation (Harmon) manufactures and sells organic pigments and organic pigment formulations in the United States.

5. In its fiscal year ended December 31, 1977, Rhinechem had total sales of approximately \$1,329,979,000 of which domestic sales accounted for \$1,151,574,000; Mobay had total commercial sales of \$622,087,000; and Harmon had total commercial sales of \$21,428,000.

6. Harmon is the eighth largest manufacturer of organic pigments in the United States.

7. Harmon is now and for many years has been a member of the Dry Colors Manufacturers Association (DCMA) which is a trade association made up of the major manufacturers of organic and inorganic pigments.

Chemetron Corporation

8. Chemetron Corporation (Chemetron) is a corporation organized under the laws of the State of Delaware, with its principal place of business at 111 E. Wacker Drive, Chicago, Illinois.

9. Chemetron is a wholly-owned subsidiary of Allegheny Ludlum Industries (Allegheny), a corporation organized under the laws of the Commonwealth of Pennsylvania, with its principal place of business at 2700 Two Oliver Plaza, Pittsburgh, Pennsylvania.

10. Chemetron through its unincorporated Pigments Division (CPD) produces organic pigments and sells said organic pigments throughout the United States.

11. In its fiscal year ended January 1, 1978, Chemetron had net sales of approximately \$493,906,000, while CPD's net sales were approximately \$51,784,000.

12. CPD is the third largest manufacturer of organic pigments in the United States.

13. Chemetron is now and for many years has been a member of the Dry Colors Manufacturers Association (DCMA).

Jurisdiction

14. At all times relevant herein Rhinechem and Chemetron have been engaged in the manufacture and sale of organic pigments in interstate commerce and are engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and each is a corporation whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

The Merger Agreement

15. On or about June 12, 1978, Rhinechem and Allegheny entered into an agreement in principle which provides, *inter alia*, for the acquisition by Rhinechem of the assets of Chemetron's Pigment Division.

Trade and Commerce

16. The relevant line of commerce is the manufacture and sale of organic pigments and submarkets thereof.

17. A relevant section of the country or geographic market is the entire United States.

18. The manufacture and sale of organic pigments is concentrated, with the combined market share of the four largest manufacturers estimated to be approximately 51%.

19. Barriers to entry into the manufacture and sale of organic pigments are substantial.

Actual Competition

20. Rhinechem and Chemetron are and have been for many years actual competitors of each other in the manufacture and sale of organic pigments and submarkets thereof and actual competitors of others engaged in the manufacture and sale of organic pigments and submarkets thereof throughout the United States.

21. In 1977, Rhinechem accounted for approximately 6.73% of United States production and sale of organic pigments and Chemetron's Pigment Division accounted for approximately 11.77% thereof.

Effects; Violations Charged

22. The effects of the proposed acquisition may be to substantially lessen competition or tend to create a monopoly in the relevant market 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, in the following ways, among others:

(a) actual competition between Rhinechem and Chemetron in the manufacture and sale of organic pigments and submarkets thereof will be eliminated;

(b) actual competition between competitors generally in the manufacture and sale of organic pigments and submarkets thereof may be lessened;

(c) Chemetron's Pigment Division will be eliminated as an actual substantial independent competitor in the manufacture and sale of organic pigments and sub-markets thereof;

(d) the merger will result in increased concentration in the manufacture and sale of organic pigments and diminishing possibilities for eventual deconcentration; and

(e) mergers or acquisitions between other organic pigment manufacturers may be fostered, thus causing a further substantial lessening of competition and tendency toward monopoly in the manufacture and sale of organic pigments.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the Rhinechem Corporation (hereinafter "respondent") named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and Section 7 of the Clayton act, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondent, its attorney, 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Rhinechem Corporation is a corporation, 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 425 Park Ave., 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 respondent, and the proceeding is in the public interest.

ORDER

Definitions

For purposes of this order the following definition shall apply:

Organic pigments means insoluble color particles characterized by a chemical composition which includes carbon rings or chains as the basic part of their molecular structure and used to impart color to a variety of materials.

I

It is ordered, That Rhinechem forthwith terminate all agreements which provided for the acquisition of the organic pigments business of Chemetron Corporation by a subsidiary of Rhinechem and provide evidence that all such agreements have been terminated and that all confidential documents provided to Rhinechem by Allegheny Ludlum Industries, Inc., and Chemetron Corporation in connection with the merger agreement have been returned or destroyed. Nothing herein contained shall relieve Rhinechem from any obligations of confidentiality imposed by agreement between the parties.

II

It is further ordered, That through December 31, 1981, Rhinechem, its successors or assigns, shall not acquire, either directly or indirectly, any or all of the organic pigments business of Chemetron Corporation nor shall it sell any or all of its organic pigments business to Allegheny Ludlum Industries, Inc., or Chemetron Corporation, whether represented by securities or assets, until ninety (90) days following receipt by the Director of the Bureau of

Competition of the Federal Trade Commission of written notice of the proposed acquisition or merger, such written notice to be similar in form and content to the notice required under Section 7A of the Clayton Act and the premerger notification rules promulgated thereunder and shall specifically refer to this order. (This provision shall not prohibit sales of organic pigments or other transactions between Rhinechem and Chemetron Corporation in the ordinary course of business.) If within ninety (90) days of receipt by the Director of such notice the Commission issues an administrative complaint challenging the proposed acquisition or merger, such proposed acquisition or merger shall not be consummated, nor shall any steps be taken to effectuate such proposed acquisition or merger until the administrative complaint issued by the Commission is dismissed by the Commission, until a final order as defined in 15 U.S.C. 21, 45 is entered or until a consent order is entered and served upon Rhinechem in the administrative proceeding. If within the aforesaid ninety (90) days the Bureau of Competition receives any written position papers from Rhinechem and the Bureau recommends issuance of a complaint, the Bureau shall promptly forward to the Commission such papers together with the written notice submitted to the Bureau Director. In the event that within ninety (90) days of the Director's receipt of such notice the Commission issues an administrative complaint challenging the proposed acquisition or merger, the Bureau of Competition shall exert its best efforts to complete the administrative proceeding in an expedited manner.

III

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

IV

It is further ordered, That Rhinechem shall within sixty (60) days after service upon it of this order file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
APPLIANCE DEALERS COOPERATIVE, ET AL.

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

Docket C-2969. Complaint, June 7, 1979 — Decision, June 7, 1979

This consent order, among other things, requires a Newark, N.J. appliance dealers cooperative, its executive director, 22 member companies, and five affiliated firms to cease harassing, intimidating or otherwise attempting to control or interfere with retailers' resale pricing; advertising; sale and distribution of consumer products; selection of customers; or their right to locate and operate businesses in any geographic area. The cooperative is further required to supply its members, on an equal and timely basis, with all relevant information relating to its purchase and sale of merchandise; and cause its by-laws to be adjusted so as to be consistent with the terms of the order.

Appearances

For the Commission: *Alfred J. Ferrogari and Henry R. Whitlock.*

For the respondents: *Basil J. Mezines, Stein, Mitchell & Mezines, Washington, D.C., Ephraim Frank Schwartz, Passaic, N.J., Marvin S. Goldklang, Cahill, Gordon & Reindell, New York City and Gerard C. Sims, Jr. and Allan Raven, Raven, Davis & Sweet, Adison, N.J.*

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 the parties named in the caption hereof, hereinafter more particularly described and designated 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 Appliance Dealers Cooperative (hereinafter referred to as ADC) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. ADC maintains its home office and principal place of business at 84 Lockwood St., Newark, New Jersey. ADC operates as a buying cooperative for its shareholder-members, supplying these members with a variety of consumer appliances and products. Its members are corporate and non-corporate business enterprises which are engaged primarily in the retail sale of consumer appliances and products.