

Complaint

94 F.T.C.

IN THE MATTER OF
ATLANTIC RICHFIELD COMPANY

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

Docket 9089. Complaint, Oct. 13, 1976 — Decision, Oct. 29, 1979

This consent order, among other things, requires a Los Angeles, Calif. integrated energy company, engaged in various other activities including those related to copper, to timely divest its interest in the Heddleston copper and molybdenum mineral property and Bear copper mineral property located in Lyon County, Nevada; its entire voting stock interest in the Inspiration Consolidated Copper Company; and its joint venture interest in the Anamax Mining Company, a Pima County, Arizona integrated copper company. Each of the divestitures would have to be to an "Eligible Person," and upon company's failure to divest these interests within specified time periods, divestiture authority must be transferred to a trustee who will be charged to attempt diligently to effect divestiture at fair value within three years from the date of his appointment. Should the trustee not have divested the property within such three-year period, he would be required to divest it within one year at the best price he is reasonably able to obtain. The order additionally provides for arbitration should any dispute regarding the terms of the order arise between respondent and the Commission or trustee.

Appearances

For the Commission: *Ernest A. Nagata, Risa D. Sandler, Paul Breitstein and Wallace A. Witkowski.*

For the respondents: *Frances X. McCormack and Donald A. Bright, Los Angeles, Calif. and Jerome Shapiro, Hughes, Hubbard & Reed, New York City.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the Atlantic Richfield Company, a corporation subject to the jurisdiction of the Commission, has acquired a part and has entered into an agreement to acquire the whole of the stock of The Anaconda Company, a corporation subject to the jurisdiction of the Commission, 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 (15 U.S.C. 45), 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:

I. ATLANTIC RICHFIELD COMPANY

1. Respondent, Atlantic Richfield Company (hereinafter "ARCO") is a Pennsylvania corporation with its principal office and place of business located at 515 South Flower St., Los Angeles, California.

2. In 1975, ARCO had sales of \$7,307,854,000 and assets of \$7,364,787,000. In that year it was the 15th largest publicly held industrial corporation in the nation in total sales and ranked 13th in assets. ARCO ranked eighth in net income and seventh in total assets among petroleum companies in 1975.

3. ARCO is an integrated energy company which is involved in the exploration for and production of crude oil and natural gas, transportation of oil and gas, the manufacturing, refining and marketing of petroleum and gas products, the production and sale of uranium oxide, exploration for copper, and the ownership of coal reserves and sale of coal. In addition, ARCO is a substantial producer of petrochemicals, plastics and plastic products.

4. At all times relevant herein, ARCO was engaged in the purchase or sale of products in interstate commerce and was a corporation engaged in commerce as commerce is defined in the Clayton Act, as amended, and was a corporation whose business was in or affected commerce within the meaning of the Federal Trade Commission Act, as amended.

II. The Anaconda Company

5. Respondent, The Anaconda Company (hereinafter "Anaconda"), is a Montana corporation with its principal office and place of business located at 25 Broadway, New York, New York.

6. In 1975, Anaconda had sales of \$1,087,778,000 and assets of \$2,007,453,000. In that year it ranked 188th in sales and 71st in assets among publicly held industrial corporations in the United States.

7. Anaconda is principally engaged in the business of producing primary copper, brass mill products, wire mill products, primary aluminum, fabricated aluminum products, uranium oxide and industrial valves. In 1975, it had sales of uranium oxide amounting to \$24 million; it had sales of primary copper and copper products amounting to \$625.1 million; and it had sales of aluminum and aluminum products amounting to \$335.8 million.

8. In 1975, Anaconda was the third ranking producer of copper in

the nation, was a leading national producer of primary aluminum, aluminum products and brass mill products, and is believed to have been the second largest producer of uranium oxide in the nation.

9. At all times relevant herein, Anaconda was engaged in the purchase or sale of products in interstate commerce and was a corporation engaged in commerce as commerce is defined in the Clayton Act, as amended, and was a corporation whose business was in or affected commerce within the meaning of the Federal Trade Commission Act, as amended.

III. THE PROPOSED ACQUISITION

10. On March 18, 1976, ARCO made a cash tender offer for approximately 6,013,000 shares, or 27 percent, of Anaconda common stock at a price of \$27 per share, or a total transaction price of approximately \$162 million.

11. On July 1, 1976, ARCO entered into a preliminary merger agreement with Anaconda and purchased \$100 million principal amount of Anaconda's 8 percent conditionally convertible subordinated debentures.

12. On July 26, 1976, the parties entered into a plan and agreement of reorganization (the "merger agreement"). Under the terms of the merger agreement, Anaconda will become a wholly-owned subsidiary of ARCO, and each share of Anaconda common stock will be converted into one-half share of ARCO common stock and a right to receive \$6 in cash.

13. A special meeting of Anaconda shareholders regarding the merger proposal is to be held on October 20, 1976. The affirmative vote of 66 2/3 percent of the outstanding shares of Anaconda common stock is required for approval of the proposal. Anaconda's management has recommended shareholder approval of the proposal.

IV. TRADE AND COMMERCE

14. The relevant geographic market is the United States as a whole. The relevant product markets are the following:

- (a) Copper mine production.
- (b) Production and sale of refined copper.
- (c) Production and sale of uranium oxide.

A. *Copper Mine Production*

15. Copper mine production in the United States in 1975 was approximately 1.41 million short tons.

16. Concentration in domestic copper mine production is high, with the top four firms accounting for 59.0 percent and the top eight firms accounting for 86.6 percent of production in 1975.

17. Anaconda was the third largest company in mine production in 1975 with 11.1 percent.

18. Barriers to entry into copper mine production are high.

19. ARCO is a likely potential entrant into copper mine production. It has demonstrated interest in entering the industry, and is involved in exploration for copper.

20. ARCO is one of the few most likely potential entrants into copper mine production.

B. Refined Copper

21. Production capacity for refined copper in the United States was 3,027,800 tons at the end of 1975.

22. Concentration in the production and sale of refined copper is high, with the top four firms accounting for 72.0 percent and the top eight firms accounting for 93.1 percent of domestic refining capacity in 1975.

23. In 1975, Anaconda was the fourth largest refiner of copper with 10.1 percent of domestic capacity.

24. Barriers to entry in the production and sale of refined copper are high.

25. ARCO is a likely potential entrant into the production and sale of refined copper. It has demonstrated interest in entering the industry, and is involved in exploration for copper.

26. ARCO is one of the few most likely potential entrants into the production and sale of refined copper.

C. Uranium Oxide

27. Production of uranium oxide in the United States for domestic consumption in 1974 totaled 23,756,565 pounds and in 1975 totaled approximately 23,200,000 pounds.

28. Concentration in the production of uranium oxide is high, with the top four firms accounting for 60 percent and the top eight firms accounting for 84 percent of total United States production in 1974.

a. Actual Competition

29. In 1974, Anaconda was the second largest producer and seller of uranium oxide in the nation, with 17.8 percent of total United States production. Anaconda is believed to have remained the second

largest producer in 1975 with approximately 15 percent of total United States production. Anaconda's sales of uranium oxide in 1975 totaled \$23,994,000.

30. In 1975, ARCO entered into the production of uranium oxide. A joint venture in which ARCO owns a 50 percent interest began operations in April 1975 with a development period running through the month of July 1975. ARCO's share of the joint venture's 1975 production of uranium oxide amounted to 49,000 pounds, or 0.21 percent of total United States production. ARCO's 1975 shipments of uranium oxide amounted to 32,690 pounds, or 0.13 percent of total domestic shipments. ARCO's sales of uranium oxide in 1975 totaled \$652,492.

31. Anaconda is believed to be the fifth largest holder of uranium reserves in the United States. ARCO is also a substantial holder of uranium reserves. Substantial portions of the reserves of each are presently uncommitted.

32. Anaconda and ARCO are competitors in the production and sale of uranium oxide in the United States.

b. Potential Competition

33. Barriers to entry into the production and sale of uranium oxide are substantial.

34. ARCO is a likely potential competitor on a significant scale in the production and sale of uranium oxide by reason of its demonstrated interest, size and financial resources, and technical capabilities, among other factors.

35. ARCO is one of the few most likely potential competitors on a significant scale in the production and sale of uranium oxide.

V. EFFECTS OF THE ACQUISITION

36. The effects of the acquisition of Anaconda by ARCO may be substantially to lessen competition or to tend to create a monopoly in the production and sale of refined copper and uranium oxide and in copper mine production throughout the United States in violation of Section 7 of the Clayton Act, as amended, and the effects of the acquisition may be unreasonably to restrain trade and to hinder competition unduly in the production and sale of refined copper and uranium oxide and in copper mine production, thereby constituting a restraint of trade and an unfair act and practice and an unfair method of competition in commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended, in the following ways among others:

(a) Significant potential competition between ARCO and producers of copper, including Anaconda, both in copper mine production and in the production and sale of refined copper, will be eliminated.

(b) Actual competition between ARCO and Anaconda in the production and sale of uranium oxide will be eliminated.

(c) Significant potential competition between ARCO and producers of uranium oxide, including Anaconda, will be eliminated.

VI. VIOLATIONS CHARGED

37. The acquisition of Anaconda common stock by ARCO and the merger agreement between ARCO and Anaconda constitute violations of Section 7 of the Clayton Act, as amended, (15 U.S.C. 18) and constitute a violation of Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45).

Commissioner Dole did not participate for reason of absence.

DECISION AND ORDER

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

The respondent, its attorneys, 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, and having duly considered the comments filed by interested persons pursuant to Section 3.25(f) of its Rules, and having modified the consent agreement, 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 Atlantic Richfield Company is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at 515 South Flower St., Los Angeles, California.

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

For purposes of this order, the following definitions shall apply:

(a) "Respondent" means Atlantic Richfield Company, a corporation, and its subsidiaries, successors and assigns.

(b) The term "Subsidiary" with respect to any Person named herein means any corporation in which such named Person owns fifty percent (50%) or more of the outstanding securities having ordinary voting power to elect a majority of the Board of Directors of such corporation (whether or not any other class of security has or might have voting powers by reason of the happening of a contingency).

(c) "Person" means any individual, corporation (including subsidiaries thereof), partnership, joint venture, trust, unincorporated association or organization, or government or agency or political subdivision thereof, or other business or legal entity, other than Respondent.

(d) "Copper Company" means any Person having Operating Copper Properties within the Restricted Area whose combined average annual copper mine production for the five years immediately preceding an acquisition or Joint Venture which may be subject to the provisions of Paragraphs VIII, IX or X of this order exceeded 10,000 short tons of recovered copper, excepting any such Person which has ceased production of copper from all of its Operating Copper Properties within the Restricted Area for more than two years prior to an acquisition or Joint Venture which may be subject to the provisions of Paragraphs VIII, IX or X of this order.

(e) "The Copper Market" shall consist of all primary copper production from mines in the United States, as reported by the American Bureau of Metal Statistics for the most recent applicable calendar year or years for which statistics have been published prior to the date of an acquisition or Joint Venture which may be subject

to the provisions of Paragraphs I through V, VIII, IX or X of this order.

(f) "Operating Copper Property" means any deposit which at the time of an acquisition or Joint Venture which may be subject to the provisions of Paragraphs VIII, IX or X of this order is being mined and (i) which is being operated primarily for the purpose of recovering copper contained in the ore being mined. (ii) for which the dollar value of copper recovered exceeds the dollar value of each other mineral recovered except as provided in Paragraph IX, or (iii) which is producing, as a by-product or co-product of other mine production, copper at an average annual rate of 20,000 short tons or more of recovered copper after adjustment in each year for production lost as a result of strikes or other labor interruptions. Operating Copper Properties shall also include:

(1) Any deposit, which would otherwise be an Operating Copper Property, except that its operation has been suspended or discontinued for less than two years prior to an acquisition or Joint Venture which may be subject to the provisions of Paragraphs VIII, IX or X of this order or whose operations were suspended as a consequence of or in connection with the contemplated acquisition of such deposit by Respondent.

(2) Any Non-Operating Copper Property which at the time of an acquisition or Joint Venture which may be subject to the provisions of Paragraphs VIII, IX or X of this order is under active mine development and is scheduled by its owner or owners to enter into production within five years.

(g) "Non-Operating Copper Property" means any deposit for which its owner or owners contemplate at the time of an acquisition or Joint Venture which may be subject to the provisions of Paragraphs VIII, IX or X of this order (i) that any operation would be primarily for the recovery of copper, (ii) that the dollar value of copper recovered would exceed the dollar value of each other mineral to be recovered except as provided in Paragraph IX, or (iii) that any operation would produce, as a by-product or co-product of its mine production, copper at an average annual rate of 20,000 short tons or more of recovered copper.

(h) (1) Subject to the provisions of subparagraph (2) of this definition "h", "Eligible Person" means all Persons other than Noranda Mines Ltd., INCO Ltd., the Anglo American Group, and any of their respective subsidiaries, and any other Person having more than ten percent (10%) of the Copper Market for any of the three calendar years immediately preceding (i) an attempt by such

Person to acquire a property or interest to be divested under the provisions of Paragraphs I through V of this order, or (ii) an attempt by such Person to enter into a Joint Venture with Respondent which may be subject to the provisions of Paragraphs IX and X of this order. The "Anglo American Group" means the Anglo American Corporation of South Africa Limited, Charter Consolidated Ltd., De Beers Consolidated Mines Ltd., Hudson Bay Mining and Smelting Co., Limited, Minerals and Resources Corporation Ltd., Anglo American Corporation of Canada Limited, and Inspiration Consolidated Copper Company and their respective subsidiaries.

(2) Any Person otherwise eligible under subparagraph (1) of this definition "h" having between five percent (5%) and ten percent (10%) of the Copper Market for any of the three calendar years immediately preceding any of the events described in sections (i) and (ii) of subparagraph (1) of this definition "h", shall be considered to be an "Eligible Person" only upon prior approval of the Commission.

(i) "Ineligible Person" means all Persons other than those classified as "Eligible Persons" in definition "h."

(j) "Divest" means any act by which Respondent sells, transfers, conveys or relinquishes ownership, possessory interest and control in a property subject to this order.

(k) "Fair Value" means such consideration, taking into account all terms and conditions of transfer and payment therefor, that would be exchanged between a willing buyer and a willing seller for the transfer of a property, where neither buyer nor seller was under any constraints or impediments, including any obligation on the part of the seller to transfer the property within a specified period, whether or not that fact were known to the buyer.

(l) "Joint Venture" means a joint business undertaking by two or more Persons, for the purpose of carrying out a particular objective or objectives, pursuant to an agreement which provides for (i) joint contributions to capital, which may include tangible and intangible assets, (ii) sharing of profits or production in kind, and (iii) a mutual right to control, *provided, however*, that this definition shall not include any venture in which Respondent presently participates, and, *provided further*, that a holder of a right to a Deferred Compensation Interest shall not for that reason be a participant in a Joint Venture.

(m) "Restricted Area" means the United States, including Puerto Rico.

(n) "Deferred Compensation Interest" means any promise of deferred payment, including any royalty, carried interest, production payment or other interest that is not coupled with a right to

participate in the operation or management of a property, except to the extent necessary to protect the holder's Deferred Compensation Interest upon default or where actions by the purchaser or operator threatened destruction of, or substantial harm to, the holder's Interest. Payment to the holder of a Deferred Compensation Interest may include cash or production in kind. Payment to Respondent with respect to a Deferred Compensation Interest shall not exceed either (i) ten percent (10%) of production in kind, (ii) ten percent (10%) of gross proceeds, (iii) ten percent (10%) of net profits, or (iv) ten percent (10%) of net smelter returns resulting from the operation of a property subject to such Interest.

(o) "Major Change of Condition" means an involuntary reduction in Respondent's domestic production of copper whereby its total domestic copper mine production in any calendar year fails to exceed 110,000 short tons of recovered copper and it appears that such reduced level of production (absent any act permitted by Paragraph XI) is unlikely to be materially increased above 110,000 short tons of recovered copper, annual production, for a two-year period following such year of initial reduction. Such involuntary reduction means:

(i) acts of God including fire, flood and earthquakes, unexpected variations or changes in the technical characteristics of ore deposits, rebellion, riot, civil unrest or war, whether declared or not;

(ii) changes in operating, raw materials, transportation or other costs beyond the direct control of Respondent; or

(iii) the action or inaction of any federal, state or local government entity, including without limitation actions promulgating, modifying or refusing to modify environmental, health, safety or other regulations

as a result of which, continued operations at previous levels at any copper property or facility, including any concentrator, smelter or refinery of Respondent, would result in net operating losses as measured by the difference between actual or expected operating revenues and actual or expected cash costs of production, along with any actual or expected capital charges directly related to the involuntary reduction, for the affected properties and facilities. Further, Respondent's copper mine production in any year shall be adjusted by the amount of production lost through any strike or other labor interruption (whether legal or illegal, authorized or unauthorized), as measured by the actual production in the previous year for the period corresponding to the period of strike or labor interruption (unless a strike or labor interruption was in effect during such prior period, in which case the measurement shall be

based on the next closest year during which there was no strike or labor interruption during the corresponding period), provided that if an involuntary reduction, as defined herein, occurs prior to a strike or labor interruption, the production lost as a result of strike or labor interruption shall be measured by the prior year's production adjusted downward by the effect of the involuntary reduction.

(p) "Catastrophic Change of Condition" means a Major Change of Condition whereby Respondent's total domestic copper mine production in any calendar year fails to exceed 80,000 short tons of recovered copper.

(q) "Limitation Period" means the period commencing at the Effective Date of this order and terminating on the fifth anniversary of such date; *provided, however*, that: (i) should Respondent fail to divest four of the five properties subject to Paragraphs I through V within two calendar years of the Effective Date of this order, the Limitation Period shall be extended day for day by the time in excess of two calendar years from such Effective Date taken by Respondent to divest the fourth property which is ultimately divested, and (ii) the Limitation Period shall be extended day for day by the time in excess of four calendar years from such Effective Date taken by Respondent to divest the fifth property which is ultimately divested (with any additional time resulting from the operation of clauses (i) and (ii) to be calculated concurrently rather than consecutively); and, *provided further*, that in no event shall the Limitation Period extend beyond the tenth anniversary of the Effective Date of this order.

(r) "Anamax" means Anamax Mining Company, a partnership organized under the laws of the State of Arizona between the Anaconda Company and Amax Arizona, Inc., a subsidiary of Amax.

(s) "Effective Date" means the day on which this order becomes final by service upon Respondent by the Commission.

I

It is ordered, That within three years of the Effective Date of this order, Respondent shall divest its entire interest in the Heddleston property which shall include all fee lands, patented mining claims, unpatented mining claims, leases and other interests, including water rights appurtenant thereto, located in the following legal subdivisions situated in Lewis and Clark County, State of Montana, to wit:

Township 14 North, Range 6 West, Montana Principal Meridian

Sections 16 to 22, inclusive; 27 to 29, inclusive; and 31 to 34, inclusive.

Township 15 North, Range 7 West, Montana Principal Meridian

Sections 20 to 22, inclusive; 27 and 28,

to an Eligible Person, *provided, however*, that Respondent may continue to hold a Deferred Compensation Interest. Should Respondent, after diligent efforts, fail to divest the Heddleston property at Fair Value within the specified three-year period, it shall transfer authority to divest the property to a Trustee as provided in Paragraph XII.

II

It is further ordered, That within four years of the Effective Date of this order, Respondent shall divest its entire interest in the Ann Mason property which shall include all fee lands, patented mining claims, unpatented mining claims, leases and other interests, including water rights appurtenant thereto, located in the following legal subdivisions situated in Lyon County, State of Nevada, to wit:

Township 13 North, Range 24 East, Mount Diablo Base and Meridian

Section 10: SE 1/4	Section 15: E 1/2
Section 11: S 1/2	Section 22: NE 1/4
Section 12: SW 1/4	Section 23: N 1/2
Section 13: W 1/2	Section 24: NW 1/4
Section 14: All	

to an Eligible Person, *provided, however*, that Respondent may continue to hold a Deferred Compensation Interest. For purposes of this Paragraph II, Amax and its subsidiaries shall be considered Eligible Persons if, with respect to the divestiture of the Respondent's interest in Anamax provided in Paragraph V, Respondent shall have obtained from Amax or its subsidiaries and/or Anamax substantially the entire Helvetia Property, as described in Paragraph V(2), subject to the retention by Anamax or Amax or its subsidiaries of a Deferred Compensation Interest in a magnitude not to exceed that set forth in the last sentence of definition "n." Should Respondent, after diligent efforts, fail to divest the Ann Mason property at a Fair Value within such four year period, it shall

transfer authority to divest the property to a Trustee as provided in Paragraph XII.

III

It is further ordered, That within four years of the Effective Date of this order, Respondent shall divest its entire interest in the Bear property which shall include all fee lands, patented mining claims, unpatented mining claims, leases and other interests, including water rights appurtenant thereto, located in the following legal subdivisions situated in Lyon County, State of Nevada, to wit:

Township 14, North, Range 25 East, Mount Diablo B.M.

Section 33: E 1/2 SW 1/4, W 1/2 SE 1/4,
 S 1/2 NE 1/4 SE 1/4

Township 13 North, Range 25 East, Mount Diablo B.M.

Section 3: SW 1/4 NW 1/4, N 1/2 NW
 1/4 SW 1/4

Section 4: NE 1/4, E 1/2 E 1/2 NW 1/4,
 N 1/2 N 1/2, SE 1/4

to an Eligible Person, *provided, however,* that Respondent may continue to hold a Deferred Compensation Interest. For purposes of this Paragraph III, Amax and its subsidiaries shall be considered Eligible Persons if, with respect to the divestiture of the Respondent's interest in Anamax provided in Paragraph V, Respondent shall have obtained from Amax or its subsidiaries and/or Anamax substantially the entire Helvetia Property, as described in Paragraph V(2), subject to the retention by Anamax or Amax or its subsidiaries of a Deferred Compensation Interest in a magnitude not to exceed that set forth in the last sentence of definition "n." Should Respondent, after diligent efforts, be unable to divest the Bear property at Fair Value within such four year period, it shall transfer authority to divest the property to a Trustee as provided in Paragraph XII.

IV

It is further ordered, That within one year of the Effective Date of this order, Respondent shall divest its entire voting stock interest (including any common or preferred stock which it may own at the time of disposition) in Inspiration Consolidated Copper Company, or

any successor thereto, to an Eligible Person. For purposes of this Paragraph IV, the Anglo-American Group shall be considered to be an Eligible Person. Should Inspiration Consolidated Copper Company, or any successor thereto, fail or refuse to redeem for any reason, including lack of capital or earned surplus sufficient to permit lawful redemption, the common or preferred stock held by Respondent at the time such stock is tendered for redemption, Respondent shall have an additional two years to dispose of its interest. Should Respondent, after diligent efforts, fail to divest its interest in Inspiration Consolidated Copper Company or any successor thereto at Fair Value within the specified additional two year period, Respondent shall transfer authority to divest its interest to a Trustee as provided in Paragraph XII. Fair Value for purposes of this Paragraph IV shall be defined to be any consideration equal to or greater than \$33 a share, or the equivalent thereto after adjustment for any stock dividends or stock splits which may occur after March 1, 1979.

V

It is further ordered, That within five years of the Effective Date of this order, Respondent shall Divest its interest in Anamax to an Eligible Person. Anamax is engaged in the mining of copper in Pima County, Arizona, from the Twin Buttes Mine and the Palo Verde Mine, the latter mine operated by the Eisenhower Mining Company, a partnership with Asarco, Inc. Anamax's current annual production capacity from the two mines is 120,000 tons of recovered copper, including 35,000 tons of electrowon refined copper, and Anamax intends to produce uranium from copper ores. For purposes of this Paragraph V Anamax and its subsidiaries shall be considered to be Eligible Persons.

Provided, however, that notwithstanding the foregoing:

(1) It is intended that the divestiture of Respondent's interest in Anamax is to be accomplished in such a manner as to avoid a termination of the Anamax partnership for federal income tax purposes. It is recognized that under Section 708(b)(1)(B) of the Internal Revenue Code, and the pertinent Treasury Regulations, the partnership will be treated as having terminated for tax purposes in the event that there is a sale or exchange of 50% or more of partnership capital and profits within a twelve month period; such a tax termination would potentially generate severe adverse tax consequences. In order to avoid such a termination, Respondent shall

not be required to divest its entire interest in Anamax on condition that:

(a) Respondent shall, in any event, divest at least so much of its interest in Anamax as to constitute a divestiture of a 45% interest in the capital of Anamax (as the term "capital" is used in Section 708 of the Internal Revenue Code of 1954 in its present form or as hereafter amended or in any corresponding provision of any subsequent federal tax law), provided that notwithstanding any other provision of this order said divestiture shall include, for purposes of the 45% divestiture requirement, divestiture by way of a total or partial liquidation of Respondent's interest in Anamax as provided in subparagraph (2) or a total or partial reallocation of Respondent's interest within Anamax as provided in subparagraphs (3) and (4) and/or a sale, exchange, transfer or other disposition of such interests or any combination of the foregoing;

(b) In complying with its obligations under this subparagraph (1), Respondent shall first propose a divestiture which will reduce its interest in Anamax to an interest which shall not exceed an interest reasonably adequate to prevent a termination of the Anamax partnership for federal tax purposes, provided, for purposes of this subparagraph (1)(b), said divestiture shall include divestiture by way of a total or partial liquidation of Respondent's interest in Anamax as provided in subparagraph (2) or a total or partial reallocation of Respondent's interests within Anamax as provided in subparagraphs (3) and (4) and/or a sale, exchange, transfer or other disposition of such interests or any combination of the foregoing. Respondent may then seek a ruling from the Internal Revenue Service to the effect that the divestiture proposed under this subparagraph (1)(b) will not cause a termination of Anamax for purposes of such Section 708 in its present form or as hereafter amended or under any corresponding provision of any subsequent federal tax law. Should the Internal Revenue Service decline to issue such ruling or fail to issue such ruling within a period of seven months after the ruling is requested, Respondent shall effect a divestiture pursuant to subparagraph (1)(a).

(c) Thirty (30) days prior to filing any request for such ruling as is described under subparagraph (1)(b) above, Respondent shall provide a copy of such request to the Commission, and the Commission thereafter will have twenty (20) days in which to submit the question of Respondent's compliance with subparagraph (1)(b) above to arbitration pursuant to Paragraph XIX or pursuant to such other procedure as the Commission and Respondent may then agree to.

Any arbitration held under this subparagraph (1)(c) shall be solely for the purpose of determining whether Respondent's proposed divestiture, as set forth in the request for ruling, constitutes a reasonable effort to comply with the provisions of subparagraph (1)(b). The arbitrator shall be required to render his decision within seventy-five (75) days of the date the Commission shall submit the proposed divestiture to arbitration; should the arbitrator decide in Respondent's favor or fail to issue a final decision within such seventy-five (75) day period, Respondent shall be entitled to go forward with the proposed divestiture, which shall be deemed to be in compliance with the provisions of subparagraph (1)(b);

(d) If the Commission believes that a ruling requested under subparagraph (1)(b) should be issued, Respondent will not object to the Commission's submission of such views to the Internal Revenue Service; and

(e) Respondent's remaining non-divested interest in Anamax, whether retained pursuant to subparagraph (1)(a) or (1)(b), but excluding any interest retained or received by Respondent as provided in subparagraphs (2), (3) and (4), shall be arranged so that Respondent will receive cash or other monetary consideration, rather than take copper in kind, in connection with Anamax's continued operations, provided that such arrangement shall not be required if Respondent (i) seeks the concurrence of Anamax and any partner or partners therein and fails to receive such concurrence within eight months after such concurrence is requested, or (ii) seeks a ruling from the Internal Revenue Service, and the Service declines or fails to issue a ruling within eight months after such ruling is requested, that such arrangement, combined with any other changes in Respondent's interest in Anamax, will not cause a termination of Anamax for purposes of Section 708 of the Internal Revenue Code of 1954 in its present form or as hereafter amended or in any corresponding provision of any subsequent federal tax law.

(2) Notwithstanding anything in subparagraph (1) or otherwise contained in this order, Respondent may receive from Anamax in total or partial liquidation of or in exchange for Respondent's interest therein (a) all or a portion of Anamax's interest in any one or more of the properties in the following townships situated in Pima County, State of Arizona, including East Helvetia, West Helvetia, Empire Ranch and Cienega Ranch (the "Helvetia Property"), to wit:

Township 18 South, Ranges 15, 16, 17 and 18 East
Township 19 South, Ranges 15, 16, 17 and 18 East,

Township 20 South, Ranges 17 and 18 East, all Gila and Salt River Base and Meridian,

which property is presently owned or controlled by Anamax, and/or (b) current or deferred cash payments from Anamax (any deferred cash payments may be evidenced by Anamax's promissory note or notes).

(3) Nothing in subparagraph (1) or otherwise contained in this Order shall preclude Respondent from effecting the divestiture of its interests in Anamax through a reallocation of partnership interests within Anamax as a result of which Respondent retains or increases an interest in the Helvetia Property, which may be held within, and be owned by, the Anamax partnership, in which Respondent may have an interest, provided that Respondent's interests in other partnership capital (other than that subject to this subparagraph (3)) shall not exceed the amounts permitted by subparagraph (1), and further provided that any management rights which may be held by Respondent in Anamax, attributable to an interest held under this subparagraph (3), shall be limited to the Helvetia Property, and do not permit Respondent to participate in the active management or control of those other portions of Anamax divested pursuant to this Paragraph V.

(4) Notwithstanding anything in subparagraph (1) or otherwise contained in this order, Respondent may retain, as a partner in Anamax or otherwise, the right to take in kind, or the right to sell, any minerals produced by Anamax other than uranium and copper (except that this exclusion shall not apply to uranium and copper produced as a consequence of the operation of the Helvetia Property, as provided under subparagraph (3), or as a consequence of the provisions of subparagraph (1)(e)).

Provided further, Respondent shall use its best efforts to maintain in force to the time of divestiture contemplated by this Paragraph V those provisions in the Partnership Agreement, as presently amended, which provide that should Respondent's interest in Anamax be reduced to less than 45%, it shall cease to be entitled to equal participation in the management of the partnership and, further, that should its interest be reduced to less than 20%, such remaining interest may, under certain circumstances, be purchased at the option of Amax.

Provided further, that Respondent shall not make any voluntary contribution to Anamax which would have the effect of increasing its percentage partnership interest in Anamax, provided that Respondent shall remain free to make any contributions necessary to meet

its obligations pursuant to the Partnership Agreement, as amended, any production payment agreement in effect on the Effective Date of this order or the mining plan in effect on the Effective Date of this order or any successor mining plan adopted under the Partnership Agreement, as amended, provided that the implementation of any such successor plan shall not increase Respondent's percentage partnership interest in Anamax.

And provided further, that should Respondent, after diligent efforts, be unable to divest its interest in Anamax, as provided by this Paragraph V at Fair Value within such five year period, it shall transfer authority to divest such interest, to the extent required by this Paragraph V, to a Trustee as provided in Paragraph XII.

VI

It is further ordered, That Respondent, as part of its compliance with provisions in Paragraphs I, II, III and V, shall undertake reasonable steps to advertise the availability for acquisition of the properties subject to said respective paragraphs. In discharge of this obligation, Respondent shall advertise each property, so long as it has not been divested, twice yearly in *Engineering and Mining Journal*, *Mining Congress Journal*, *Mining Engineering*, *London Mining Journal*, and *The Wall Street Journal*. Such advertisements shall contain a description of the property offered at least as detailed as the description contained in this order, and shall refer inquiring persons to an employee of Respondent active in Respondent's efforts to sell such property, giving his address and telephone number. In addition, Respondent shall within 30 days of the Effective Date of this order mail a description of each property, including the information set forth above, to no less than 50 Eligible Persons engaged in mining within the United States. Respondent agrees that it will negotiate in good faith with all Persons seeking to acquire any of the properties subject to Paragraphs I, II, III and V who are Eligible Persons, who appear to be genuinely interested in acquiring such property for their use or on behalf of an Eligible Person, and who demonstrate to Respondent their financial ability to accomplish purchase at Fair Value. Respondent shall make available to such *bona fide* prospective purchasers, to the extent it has the legal right to do so, access to factual data, including drill hole locations, logs and assay reports, and will permit escorted on-site inspections of the properties, subject to Respondent having obtained written agreement that such Person will hold confidential any information disclosed, will use such information solely for the purpose of evaluating the property and will not use such information for any

business or competitive purpose. With respect to Anamax, Respondent will use its best efforts to obtain the consent of Amax or its subsidiaries to the disclosure of factual data to prospective purchasers consistent with the provisions of the preceding sentence. Respondent shall not be required to deal with Persons purporting to act as agents for certain unknown or unspecified buyers whether or not such Persons state they intend to collect a commission or other consideration from Respondent.

VII

It is further ordered, That with respect to the divestitures required by Paragraphs I, II, III and V, this order shall not be deemed to prohibit Respondent (i) from accepting a Deferred Compensation Interest or (ii) from retaining, accepting and enforcing a promissory note, mortgage, deed of trust, lien or other similar interest, not to exceed 25 years in duration, that is not coupled with a right to participate in the operation or management of the property, except upon default or where actions by the purchaser or operator threaten destruction of, or substantial harm to, such interest or interests of Respondent and then only to the extent necessary to protect such interests, for the purpose of securing to Respondent payment of the price agreed upon by Respondent and the purchaser in connection with each divestiture; *provided, however,* that if Respondent by enforcement or settlement of such interest, or for any other reason, regains direct or indirect ownership or control of any of the divested assets, properties, rights and privileges, tangible and intangible, Respondent shall, consistent with the provisions of this order, redinvest such ownership or control as expeditiously as possible, but in no event beyond two years of the time of reacquisition; *provided further,* that should Respondent fail to redinvest any such reacquired ownership or control within two years as specified in this Paragraph VII, Respondent shall transfer authority to divest the property to a Trustee as provided in Paragraph XII.

VIII

It is further ordered, That during the Limitation Period Respondent shall not acquire, through purchase, lease or other such transaction which would confer upon Respondent ownership or control or possessory interest, any Operating Copper Property within the Restricted Area from any Copper Company, without the prior approval of the Commission; however, this restriction shall not apply to any acquisition of any ore deposit or deposits in the aggregate of

less than 250,000 tons of recoverable copper which (i) is adjacent to or nearby an ore deposit owned or controlled by Respondent prior to such acquisition, (ii) would, in the interests of adopting efficient mining practices, be consolidated with Respondent's deposit for mining purposes and share a common ore concentrator with Respondent's deposit and (iii) does not contain recoverable copper in excess of the amount of recoverable copper in such adjacent or nearby deposits owned or controlled by Respondent immediately prior to the acquisition.

IX

It is further ordered, That during the Limitation Period, Respondent shall not participate in any operating Joint Venture with any Ineligible Person with respect to any Operating Copper Property within the Restricted Area, provided further that no Joint Venture permitted by this Paragraph IX shall engage in the joint marketing or sale of copper, in whatever form, produced by the Joint Venture.

Provided, however, that nothing in this Paragraph IX or Paragraph X shall prevent Respondent from participating in the State of Alaska during the Limitation Period in (i) any operating Joint Venture with respect to an Operating Copper Property owned or controlled by Respondent prior to the establishment of such Joint Venture or (ii) any Joint Venture engaged in the development or construction of mine facilities with respect to a Non-Operating Copper Property owned or controlled by Respondent prior to the establishment of such Joint Venture, so long as:

(i) No more than a 40 percent (40%) interest in the capital and profits in any such Joint Venture is held, singly or in the aggregate, by Ineligible Persons;

(ii) Neither Kennecott Copper Corp., Phelps-Dodge Corporation, Newmont Mining Corp. nor Asarco Inc. participates in any such Joint Venture, without prior approval of the Commission; and

(iii) Any such Joint Venture shall not engage in the joint marketing or sale of copper, in whatever form, produced by such Joint Venture.

Provided further, that nothing in this Paragraph IX or in Paragraph X shall prevent Respondent from participating in the State of Alaska during the Limitation Period in (i) any operating Joint Venture with respect to an Operating Copper Property owned or controlled by a Person other than Respondent prior to the establishment of such Joint Venture, or (ii) any Joint Venture

engaged in the development or construction of mine facilities with respect to a Non-Operating Copper Property owned or controlled by a Person other than Respondent prior to the establishment of such Joint Venture so long as:

- (i) Respondent holds no more than a 40 percent (40%) interest in the capital and profits in any such Joint Venture;
- (ii) No more than two Ineligible Persons may participate with Respondent in any such Joint Venture; and
- (iii) Any such Joint Venture shall not engage in the joint marketing or sale of copper, in whatever form, produced by such Joint Venture.

And provided further, that for purposes of this Paragraph IX and Paragraphs VIII and X with respect to ore deposits in the State of Alaska, clause (ii) in definition "f" shall read "(ii) for which the dollar value of copper recovered exceeds the dollar value of all other minerals recovered" and clause (ii) in definition "g" shall read "(ii) that the dollar value of copper recovered would exceed the dollar value of all other minerals to be recovered;" definitions "f" and "g" shall in all other respects remain unchanged.

X

It is further ordered, That during the Limitation Period, Respondent shall not participate in any Joint Venture engaged in the development or construction of mine facilities with any Ineligible Person with respect to any Non-Operating Copper Property within the Restricted Area, provided further that no Joint Venture permitted by this Paragraph X shall engage in the joint marketing or sale of copper, in whatever form, subsequently produced by the Joint Venture.

Provided further, that nothing contained in Paragraphs VIII, IX and X shall prevent Respondent, in the interest of adopting efficient mining practices at a specific mining property, from acquiring or receiving, or in turn transferring or delivering, or swapping, copper deposits, ore, or concentrates from, to, or with another Copper Company or Companies owning or operating a copper property adjacent to or overlapping copper properties of Respondent, provided, however, that such transactions shall involve no more of the respective adjacent or overlapping copper properties than is reasonably necessary to such purpose.

XI

It is further ordered, That in the event of a Major Change of Condition, Respondent shall be entitled within the Limitation Period to make one acquisition or to enter into one Joint Venture which would otherwise be prohibited by Paragraphs VIII, IX or X, provided that such acquisition or Respondent's share of such Joint Venture shall not increase Respondent's total domestic copper mine production above 145,000 short tons of recovered copper a year, and further provided that no Joint Venture permitted by this Paragraph XI shall engage in the joint marketing or sale of copper, in whatever form, subsequently produced by the Joint Venture. In the event of a Catastrophic Change of Condition, Respondent shall be entitled to make one such acquisition or enter into one such Joint Venture without limitation as to size.

XII

It is further ordered, That should it be necessary to appoint a Trustee with respect to a property subject to Paragraphs I through V, such Trustee shall be appointed by agreement of Respondent and the Commission, acting through the Director of the Bureau of Competition or such other person as the Commission may designate. If they are unable to agree, then each shall nominate a representative, who, along with a third person appointed under the Commercial Rules of the American Arbitration Association, shall select the Trustee by majority vote. The Trustee shall be charged to attempt diligently to effect divestiture at Fair Value within three years from the date of his appointment. Should the Trustee not have divested the property within such three year period, he shall divest it within one year at the best price he is reasonably able to obtain. The functions and obligations of the Trustee are set forth in Appendix I. Nothing shall prevent Respondent from divesting a property after the appointment of a Trustee.

XIII

It is further ordered, That Respondent may not divest more than two of the properties subject to Paragraphs I through V to any one Eligible Person, including the subsidiaries of such Person, without the prior approval of the Commission, except that Amax and its subsidiaries may purchase the properties subject to Paragraphs II, III and V consistent with the provisions of said Paragraphs.

XIV

It is further ordered, That nothing in this Order shall prohibit:

- (1) Acquisition by Respondent of all or part of the securities or assets of its subsidiaries.
- (2) Formation of subsidiaries by Respondent and the transfer thereto of assets of Respondent or of other subsidiaries.

XV

It is further ordered, That Respondent may apply for relief to the Commission upon the occurrence of any change subsequent to the Effective Date of this order which substantially alters the competitive situation in the copper industry or which materially affects the copper operations of the Respondent.

XVI

It is further ordered, That jurisdiction is retained by the Commission for the purpose of enabling the parties to this order to apply to it at any time for such future orders and directions as may be necessary or appropriate for the construction or modification of any of the provisions hereof; *provided, however,* that in no event shall the provisions of this order be enlarged or extended to require Respondent to divest properties or interests other than those specified in Paragraphs I, II, III, IV and V or to limit or otherwise restrict Respondent's activities other than as set forth in Paragraphs VIII, IX and X. Any order of the Commission construing or declining to construe or modifying or declining to modify any of the provisions of this order shall be appealable, to the extent provided by statute, to any court of any competent jurisdiction.

XVII

It is further ordered, That pending any divestiture required by this order, Respondent shall not knowingly cause or permit the deterioration of the assets and properties specified in Paragraphs I, II, III and V in any manner that impairs the marketability of any such assets and properties. Respondent may, but shall not be required to, make capital expenditures for the improvement of any such assets and properties to an extent consistent with other provisions of this order.

XVIII

It is further ordered, That in addition to the requirements of

Paragraphs I through V concerning the divestitures ordered therein, none of the stock, assets, properties, rights, privileges or interests of whatever nature, tangible or intangible, ordered to be divested 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 control or direction of, Respondent, or to any person who owns or controls, directly or indirectly, more than one percent (1%) of the outstanding shares of the capital stock of Respondent.

XIX

It is further ordered, That any dispute between Respondent on the one hand and the Commission or the Trustee on the other hand arising under Paragraphs I through XII shall be resolved at the option of Respondent, the Commission or the Trustee by arbitration undertaken pursuant to the Commercial Rules of the American Arbitration Association.

XX

It is further ordered, That within sixty (60) days from the Effective Date of this order, and three times annually thereafter, until it has fully complied with Paragraphs I through V of this order, Respondent shall submit a verified report in writing to the Commission setting forth in reasonable detail the manner and form in which it intends to comply, is complying or has complied therewith. All such reports shall include: (a) a specification of the steps taken by Respondent to make public its desire to divest the properties specified in Paragraphs I through V, (b) a list of all Persons or organizations to whom notice of divestiture has been given, and (c) a summary of all negotiations undertaken, giving the identity and address of all interested persons or organizations and indicating whether the negotiations are concluded or are still underway, provided, however, that Respondent may delete from the report the identity of persons it has negotiated with if, in its business judgment, the disclosure of such information as a consequence of a request or suit by any Person or any committee or subcommittee thereof would hinder its efforts to divest any property subject to Paragraphs I through V at Fair Value. In each case, Respondent will make available for inspection in Washington D.C. a complete copy of its report containing such deleted information which may be reviewed by, but not copied by, personnel from the Commission. Upon request from the Commission, Respondent will make available such additional information relating to any specified negotiation which is

reasonably necessary to enable the Commission to review Respondent's efforts to comply with the provisions of Paragraphs I through V of this order; *provided, however*, Respondent may limit disclosure of confidential or proprietary information in accord with the procedures set forth in the preceding sentence.

XXI

It is further ordered, That Respondent shall notify the Commission at least thirty (30) days prior to any change in its corporate structure (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.

XXII

It is further ordered, that for so long as the Limitation Period is in effect, Respondent shall notify the Commission at least sixty (60) days in advance of (i) any acquisition by it of any Operating Copper Property or Non-Operating Copper Property within the Restricted Area from any Copper Company or (ii) any participation by it in any operating Joint Venture with respect to any Operating Copper Property within the Restricted Area, or (iii) any participation by it in any Joint Venture engaged in the development or construction of mine facilities with respect to any Non-Operating Copper Property within the Restricted Area. If any such acquisition or Joint Venture is to be undertaken pursuant to any Major Change of Condition or Catastrophic Change of Condition, Respondent shall provide at the time of notification above, a description of such Major Change of Condition or Catastrophic Change of Condition.

XXIII

It is further ordered, That Respondent shall, upon written request of the Secretary of the Commission or the Director of the Bureau of Competition of the Commission made to Respondent at its principal office for the purpose of securing compliance with this order, and for no other purpose, permit duly authorized representatives of the Commission, subject to any legally recognized privilege:

(1) Reasonable access during the office hours of Respondent, which may have counsel present, to those books, ledgers, accounts, correspondence, memoranda, and other records and documents in Respondent's

possession or control which relate materially and substantially to any matter contained in this Order.

(2) An opportunity, subject to the reasonable convenience of Respondent, to interview officers or employees of Respondent, who may have counsel present, regarding such matters.

The foregoing provision shall not be interpreted to provide any access for the Commission to records relating to any of the business activities of the Respondent other than its copper operations subject to this order.

XXIV

It is further ordered, That no acquisition, Joint Venture or other act or transaction to which Respondent is a party shall be deemed immune or exempt from the provisions of the antitrust laws by reason of anything contained in this order.

Complaint

94 F.T.C.

IN THE MATTER OF

**KARR PREVENTATIVE MEDICAL PRODUCTS, INC., ET
AL.****CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT***Docket 9109. Complaint, April 26, 1978—Decision, Oct. 29, 1979*

This consent order, among other things, requires a Beverly Hills, Calif. firm and its controlling officer, engaged in the advertising and sale of "Acne-Statin," an acne "treatment," to cease disseminating, or causing the dissemination of advertisements that represent that Acne-Statin, or any other product of similar chemical composition, cures acne, eliminates or reduces the causes of acne blemishes, and is superior to all other acne preparations and soap for the antibacterial treatment of acne. They are required to have a reasonable basis at the time of dissemination for representations relating to product efficacy, performance, characteristics or properties, or the result of the use of any product; and prohibited from misrepresenting the extent to which a product has been tested or the results of such tests. Additionally, the firm and its controlling officer are required to establish an independent, irrevocable trust account containing \$175,000 to be used to pay half of all requests for restitution by Acne-Statin purchasers.

Appearances

For the Commission: *Mark A. Heller, Ira Nerken and Ross D. Petty.*

For the respondents: *George Miron, Wyman, Bautzer, Rothman & Kuchel, Washington, D.C.*

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 Karr Preventative Medical Products, Inc. (hereinafter "KPMP"), and Atida H. Karr, M.D., as a corporate officer and an individual, hereinafter at times referred to as respondents, have violated the provisions of the 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. "KPMP" is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 9615 Brighton Way, Beverly Hills, California.

PAR. 2. Atida H. Karr, M.D. is an individual and a corporate president, treasurer, director and shareholder of "KPMP". She