

IN THE MATTER OF

THE BRITISH PETROLEUM COMPANY LIMITED, 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 C-3074. Complaint, Sept. 3, 1981—Decision, Sept. 3, 1981

This consent order requires, among other things, a London, England petroleum corporation and its American subsidiary to timely divest, in accordance with the terms of the order, all stock issued by Amax, Inc., the leading domestic producer of molybdenum. The order also bars respondent's officers and employees, for a period of ten years, from simultaneously serving in a similar role in any other molybdenum company. Further, for specified time periods, the companies are prohibited from acquiring any part of the stock, or more than 50% of the assets of any molybdenum company without prior Commission approval; and restricted from entering into any joint venture for the production and sale of molybdenum in the United States.

Appearances

For the Commission: *Elizabeth R. Rindskopf, Daniel S. Koch, Rendell A. Davis, Jr., Richard L. Sippel, Lee Goldman, Peter A. Sklarew, Robert H. Glidden, and Steven B. Feirman.*

For the respondent: *Robert E. Liedquist, Squire, Sanders & Dempsey, Washington, D.C., for The Standard Oil Company, and Stuart W. Thayer and James H. Carter, Sullivan & Cromwell, New York City, for The British Petroleum Company Limited.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents have undertaken an acquisition of Kennecott Corporation ("Kennecott") that, if consummated, would result in a 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, that said undertaking therefore constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, 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, as amended, 15 U.S.C. 45(b), stating its charge as follows:

I. THE BRITISH PETROLEUM COMPANY LIMITED

1. Respondent The British Petroleum Company Limited ("BP") is a corporation organized under the laws of England with its principal offices at London, England.

2. BP is a diversified company with over 900 subsidiaries and associated companies in 70 countries ("BP Group"). BP owns a 53% interest in The Standard Oil Company ("Sohio"), through which it plans to acquire Kennecott. BP owns 6.8% of the stock of AMAX Inc. ("Amax"). BP owns all of the stock of Selection Trust Limited. John Peter Du Cane, the chief executive officer of Selection Trust Limited, currently serves on the board of directors of Amax.

3. BP's principal business consists of the production and sale of petroleum products, chemicals, minerals, coal, and animal feed. In 1979, petroleum accounted for over 91% of BP's net sales.

4. In 1979, the BP Group had consolidated revenues of \$50.4 billion and consolidated net income of \$3.6 billion. BP is reported to be the sixth largest corporation in the world.

II. THE STANDARD OIL COMPANY

5. Respondent Sohio is a corporation organized under the laws of Ohio with its principal offices at Cleveland, Ohio.

6. Sohio is a diversified oil company with interests in coal, uranium, chemicals and plastics.

7. Sohio is a 53%-owned subsidiary of BP.

III. KENNECOTT CORPORATION

8. Kennecott is a corporation organized under the laws of New York with its principal offices at Stamford, Connecticut.

9. Kennecott is the leading domestic copper producer and is engaged in copper fabrication. It is the third ranking firm in molybdenum production, with 5.6% in 1980. Its other primary lines of business include abrasives, lead, gold, titanium, silver, iron powder, and chemicals.

10. In 1979, Kennecott had sales of \$2.4 billion, assets of \$2.8 billion, and income of \$130 million. It ranked 143 in the 1980 Fortune 500.

IV. AMAX INC.

11. Amax is a corporation organized under the laws of New York with its principal offices at Greenwich, Connecticut.

12. Amax is engaged in a wide variety of mining and related activities. It is the leading domestic producer of molybdenum, with 67.79% of domestic production. Amax is also a major producer and refiner of metals including copper, nickel, lead, tungsten, zinc, and iron. It is also the third largest domestic coal producer and is a leading independent producer of oil and natural gas.

13. In 1980, Amax had sales of \$2.95 billion, assets of \$5.28 billion, and income of \$470 million. It ranked 131 in sales and 45 in assets among the Fortune 500.

V. JURISDICTION

14. At all times relevant herein, BP, Sohio, Kennecott, and Amax have been engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

VI. THE ACQUISITION

15. On March 12, 1981, Sohio announced its agreement to acquire Kennecott. In this manner, Kennecott will become a subsidiary of BP. According to the merger agreement, Sohio will pay \$62 cash per share for 100% of Kennecott stock, yielding an estimated total purchase price of \$1.77 billion. Requisite approval by two-thirds of Kennecott's shareholders was granted at a special meeting on May 5, 1981.

VII. TRADE AND COMMERCE

16. The relevant product market is the production of molybdenum disulphide ("molybdenum").

17. The relevant geographic market for molybdenum production is the United States.

18. The production of molybdenum in the United States is substantially concentrated. In 1980, the top four firms accounted for 91.55% of production, and the top eight firms accounted for 99.24%. Amax and Kennecott ranked first and third, with 67.79% and 5.6%, respectively.

19. Barriers to entry into molybdenum production are high. Capital costs are high and increasing; reserves are not readily available; and a long lead time is necessary to establish a going concern.

VIII. ACTUAL COMPETITION

20. Amax and Kennecott both are actual competitors in the production of molybdenum in the United States market.

IX. POTENTIAL COMPETITION

21. The relevant market is concentrated, as set forth in Paragraph 18 of this Complaint.

22. Barriers to entry in the relevant market are high, as set forth in Paragraph 19 of this Complaint.

23. Feasible means of entry exist for BP to enter the United States molybdenum production market as an alternative to its acquisition of Kennecott.

24. BP is one of the most likely potential entrants into the relevant market, and there is a reasonable probability that BP is likely to enter this market in the near future by a method other than the acquisition of Kennecott.

25. An alternative method of entry offers a substantial likelihood of ultimately producing deconcentration or other significant procompetitive effects in the United States molybdenum market.

X. EFFECTS OF THE PROPOSED ACQUISITION

26. The effect of the proposed acquisition may be substantially to lessen competition or tend to create a monopoly in the production of molybdenum in the United States market, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the following ways, among others:

(a) Actual competition between Amax and Kennecott may be substantially lessened;

(b) The likelihood of eventual deconcentration of the highly concentrated molybdenum market may be substantially lessened;

(c) High barriers to entry into the United States molybdenum market may be substantially increased;

(d) The likelihood of interdependent behavior among firms in the United States molybdenum market may be substantially increased;

(e) Additional acquisitions and mergers in the industry may be encouraged; and

(f) Members of the consuming public may be deprived of the benefits of free and unrestricted competition in the production and sale of molybdenum.

XI. VIOLATIONS CHARGED

27. The effect of the proposed acquisition may be substantially to lessen competition or to tend to create a monopoly in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition staff proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, a statement that solely for purposes of this proceeding respondents will not contest any of the jurisdictional facts of the draft complaint, a further statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that a complaint should issue stating its charges in that respect, 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 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent The British Petroleum Company Limited is a corporation organized, existing and doing business under and by virtue of the laws of England, with its office and principal place of business at Britannic House, Moor Lane, London, England.

Respondent The Standard Oil Company is a corporation organized, existing and doing business under and by virtue of the laws of Ohio, with its office and principal place of business at Midland Building, Cleveland, Ohio.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and, in light of respondents' agreement that they will not contest any of the jurisdictional facts of the draft complaint, has jurisdiction of the respondents, and the proceeding is in the public interest.

ORDER

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

(a) *Respondent* means The British Petroleum Company Limited, a corporation, and its subsidiaries (any company or other entity in which it holds more than 50% of the stock or voting securities or voting rights), successors and assigns.

(b) *Amax* means AMAX Inc., a corporation, and its subsidiaries (any company or other entity in which it holds more than 50% of the stock or voting securities or voting rights), successors and assigns.

(c) *Outstanding stock* means stock or securities which have been issued and have not been recalled or purchased by the issuer, and excludes treasury stock.

(d) *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.

(e) *Molybdenum* means the metallic element Mo.

(f) *Molybdenum company* means any person which in the most recent calendar year for which information is available produced more than 3% of the contained molybdenum produced in the United States in that year.

(g) *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 joint contributions to capital, which may include tangible and intangible assets, and some sharing of profits or production in kind.

(h) *Effective date* means the day on which this Order becomes final.

I

It is ordered, That within thirty (30) months from the effective date of this Order respondent divest, absolutely and in good faith, all right, title or interest in or to any stock issued by Amax which

respondent directly or indirectly owns or controls as of the effective date of this Order.

II

It is further ordered, That until the divestiture required by Paragraph I of this Order is completed, respondent shall, at any meeting of the holders of common stock of Amax, cause any of the stock issued by Amax which respondent directly or indirectly owns or controls to be voted in respect of any matter in the same respective proportions as the votes cast by the other holders of common stock of Amax.

III

It is further ordered, That for ten (10) years commencing September 1, 1981 no person who is an officer, director or employee of any other molybdenum company shall be an officer, director or employee of respondent.

IV

It is further ordered, That for ten (10) years following the effective date of this Order respondent shall not, without the prior approval of the Commission, directly or indirectly, (a) acquire (except for investment purposes for the benefit of an employee pension fund) any part of the stock of a molybdenum company, or (b) acquire more than 50% of the assets of a molybdenum company. For purposes of the foregoing clause (b), assets shall be valued in accordance with generally accepted accounting principles.

V

It is further ordered, That for two years following the effective date of this Order respondent shall not, without the prior approval of the Commission, enter into any joint venture or similar arrangement with any other molybdenum company for the production or sale of molybdenum in the United States; and that for an additional three-year period following this two-year period, respondent shall notify the Commission ninety (90) days in advance of entering into any joint venture or similar arrangement with any other molybdenum company for the production or sale of molybdenum in the United States.

VI

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 antitrust laws by reason of anything contained in this Order.

VII

It is further ordered, That within ninety (90) days from the effective date of this Order and on the anniversary of the effective date of this Order in every year thereafter, respondent shall submit to the Commission in writing a verified report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied therewith.

VIII

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.

Complaint

98 F.T.C.

IN THE MATTER OF
AMERICAN HOME PRODUCTS CORPORATION, ET AL.

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED
VIOLATION OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 8918. Complaint, Feb. 23, 1973—Final Order, Sept. 9, 1981

This order requires, among other things, a New York City manufacturer of Anacin, Arthritis Pain Formula (APF), and other non-prescription drug products to cease misrepresenting that Anacin will relieve tension, nervousness and depression; or that it will enable users to cope with ordinary stresses of everyday life. Should the company make any comparative efficacy claims for Anacin or APF, it would be required to disclose that the analgesic ingredient in the product is aspirin. The order also prohibits misrepresentations concerning the extent or results of product testing; and bars any unsubstantiated performance claim unless accompanied by a conspicuous disclosure that such claim has not been proven. The company is further precluded from representing that its products contain any unusual or special ingredient, when, in fact, such ingredient is commonly used in similar products. Additionally, the order prohibits the C.T. Clyne Company, Inc., an advertising agency, from knowingly making unsubstantiated "superior performance" or "unusual ingredient" claims for Anacin, APF or for any other non-prescription internal analgesic product.

Appearances

For the Commission: *Melvin H. Orlans, James H. Skiles, W. Benjamin Fisherow, Ira Nerken, Judith A. Neibrief and Richard A. Bloomfield.*

For the respondents: *Samuel W. Murphy, Jr., John J. McGrath, Jr., Donald J. Frickel, and E. Thomas Sullivan, Donovan Leisure Newton & Irvine, Washington, D.C., for American Home Products Corporation, and Irving Scher and Deborah M. Lodge, Weil, Gotshal & Manges, Washington, D.C., for The C.T. Clyne Company, Inc.*

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 American Home Products Corporation, a corporation, (hereinafter referred to as "Amho"), and Clyne Maxon, Inc., a corporation, (hereinafter referred to as "Maxon"), hereinafter 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,