

Complaint

106 F.T.C.

IN THE MATTER OF

KAISER ALUMINUM & CHEMICAL CORPORATION

DISMISSAL ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT*Docket 9080. Complaint, April 27, 1976—Dismissal Order, Aug. 27, 1985*

The Federal Trade Commission has dismissed a complaint that charged Kaiser Aluminum & Chemical Corp. substantially lessened competition in the basic refractories industry by acquiring two basic refractories plants from International Mineral and Chemical Corp.'s Lavino Division. After the Commission placed a consent agreement with respondent that would settle the charges on the public record for comment (50 FR 19697), Kaiser sold all of its basic refractories plants to other companies and indicated that it has no indication of remaining in the business. As a result, the Commission has determined that it is in the public interest to reject the consent agreement and dismiss the complaint.

COMPLAINT

The Federal Trade Commission having reason to believe that Kaiser Aluminum and Chemical Corporation, a corporation subject to the jurisdiction of the Commission, has acquired the two operating basic refractory plants, inventory and related assets of the Lavino division of International Minerals and Chemical Corporation, a corporation, in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and/or 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 charging as follows:

I. DEFINITIONS

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

(a) *Basic refractories* are non-metallic insulating materials composed predominately of magnesia, magnesite, dolomite, or chromite or chrome ore, or a combination thereof.

(b) *Basic refractory bricks and shapes* are non-metallic insulating materials composed predominately of magnesia, magnesite, dolomite, or chromite or chrome ore, or a combination thereof and which are formed during manufacture into bricks and other special shapes.

(c) *Basic refractory specialties* are non-metallic insulating materials composed predominately of magnesia, magnesite, dolomite, or chromite or chrome ore, or a combination thereof and which are sold in a "hulk" or non-shaped form

II. KAISER ALUMINUM & CHEMICAL CORPORATION

1. Respondent Kaiser Aluminum and Chemical Corporation (hereinafter "Kaiser") is now and was at the time of the acquisition hereinafter described a Delaware corporation with its principal office and place of business at 300 Lakeside Drive, Oakland, California.

2. Kaiser is a fully-integrated aluminum producer and a highly-diversified industrial corporation engaged in a number of enterprises including, but not limited to, the production of agricultural chemicals, industrial chemicals, refractories materials and strontium products. In addition, Kaiser is engaged in commodities trading and owns fifty percent of Kaiser Aetna, a large real estate development firm. Kaiser also is engaged in mining or manufacturing in more than a dozen other countries. Kaiser Steel Corporation, an affiliated corporation of Kaiser, is a major consumer of basic refractories and is supplied primarily by Kaiser.

3. In 1973, Kaiser and its subsidiaries had total sales and revenues of \$1.28 billion, net income before extraordinary items of \$66.54 million, and total assets of \$1.81 billion. Kaiser was ranked by Fortune magazine as the 133rd largest in sales and 67th largest in assets in 1973 among the nation's industrial corporations.

4. Kaiser, prior to the acquisition, operated seven refractory plants in the United States and, in whole or in part, owned six additional plants located in as many other countries.

5. Prior to and since the acquisition Kaiser has been a leading domestic supplier of refractories to the steel, cement and glass industries.

6. In 1973, Kaiser had total domestic refractory shipments of \$65.8 million, representing 8.4% of the total United States shipments of refractory products.

7. In 1973, Kaiser had total domestic basic refractory sales of \$38.5 million, representing 15.7% of the total United States sales of basic refractory products and ranked number two among the nation's basic refractory producers.

8. In 1973, Kaiser had total domestic basic refractory bricks and shapes sales of \$21.4 million, representing 12.2% of the total United States basic refractory bricks and shapes sales and ranked number five among the nation's basic refractory bricks and shapes producers.

9. In 1973, Kaiser had total basic refractory specialties sales of \$17.1 million, representing 24.4% of the total United States basic refractory specialties sales and ranked number one among the nation's basic refractory specialties producers.

10. At all times relevant herein, Kaiser sold and shipped the relevant products throughout the United States and was and is now

engaged in commerce as "commerce" is defined in the amended Clayton Act and in the amended Federal Trade Commission Act.

III. THE ACQUISITION

11. On February 28, 1974, Kaiser, at a cost of \$16.9 million, acquired two basic refractory plants and related assets located at Plymouth Meeting, Pennsylvania and Gary, Indiana. These facilities comprised the Lavino Division of International Minerals and Chemical Corporation (hereinafter "Lavino").

IV. LAVINO

12. In 1973 Lavino had refractory shipments of \$27.7 million representing 3.7% of the total United States shipments of refractory products.

13. In 1973 Lavino had basic refractory sales of \$27.7 million representing 11.3% of the total United States basic refractories sales and ranked number three among the nation's basic refractory producers.

14. In 1973 Lavino had basic refractory bricks and shapes sales of \$25.5 million representing 14.5% of the total United States bricks and shapes sales and ranked number two among the nation's basic refractory bricks and shapes producers.

15. In 1973, Lavino had basic refractory specialties sales of \$2.2 million representing 3.1% of the total United States basic refractory specialties sales and ranked number five among the nation's basic refractory specialty producers.

16. At all times relevant herein Lavino sold and shipped the relevant products throughout the United States and was engaged in commerce as "commerce" is defined in the amended Clayton Act and in the amended Federal Trade Commission Act.

V. TRADE AND COMMERCE

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

18. The relevant product market is the manufacture and sale of basic refractories. The relevant product submarkets are:

- (a) manufacture and sale of basic refractory bricks and shapes and
- (b) manufacture and sale of basic refractory specialties.

A. Basic Refractories Market

19. Trade and commerce in the sale of basic refractories in the United States is substantial, with 1973 sales amounting to \$245.8 million.

20. In 1973, prior to the acquisition, concentration in the manufac-

ture and sale of basic refractories was high with the top four firms accounting for 57% of sales and the top eight accounting for 86%.

21. By virtue of the acquisition of Lavino, Kaiser controlled facilities which accounted for 26.9% of the 1973 sales of basic refractories and became *pro forma* the leading manufacturer of basic refractories in that year.

22. On a *pro forma* basis the acquisition of Lavino by Kaiser increased the 1973 four-firm concentration from 57% to 66% and eight-firm concentration from 86% to 90% in sales of basic refractories.

23. There have been no new entrants into the manufacture and sale of basic refractories since 1962.

24. Barriers to entry into the manufacture and sale of basic refractories are high and are increasing.

B. Basic Refractory Bricks and Shapes

25. Trade and commerce in the sale of basic refractory bricks and shapes in the United States is substantial, with 1973 sales amounting to \$175.7 million.

26. In 1973, prior to the acquisition, concentration in the manufacture and sale of basic refractory bricks and shapes was high with the top four firms accounting for 66% of sales and the top eight accounting for 94%.

27. By virtue of the acquisition of Lavino, Kaiser controlled facilities which account for 26.7% of the 1973 sales of basic refractory bricks and shapes and became *pro forma* the leading manufacturer of basic refractory bricks and shapes in that year.

28. On a *pro forma* basis the acquisition of Lavino by Kaiser increased the 1973 four-firm concentration from 66% to 79% and eight-firm concentration from 94% to 96% in sales of basic refractory bricks and shapes.

29. There have been no new entrants into the manufacture and sale of basic refractory bricks and shapes since 1962.

30. Barriers to entry into the manufacture and sale of basic refractory bricks and shapes are high and are increasing.

C. Basic Refractory Specialties

31. Trade and commerce in the sale of basic refractory specialties in the United States is substantial, with 1973 sales amounting to \$70.1 million.

32. In 1973, prior to the acquisition, concentration in the manufacture and sale of basic refractory specialties was high with the top four firms accounting for 80% of sales and the top eight accounting for 92%.

33. By virtue of the acquisition of Lavino, Kaiser controlled facili-

ties which accounted for 27.5% of the 1973 sales of basic refractory specialties and strengthened its position as the largest manufacturer of basic refractory specialties in that year.

34. On a *pro forma* basis the acquisition of Lavino by Kaiser increased the 1973 four-firm concentration from 80% to 83% and eight-firm concentration from 92% to 94% in sales of basic refractory specialties.

35. There have been no new entrants into the manufacture and sale of basic refractory specialties since 1962.

36. Barriers to entry into the manufacture and sale of basic refractory specialties are high and are increasing.

VI. EFFECTS OF THE ACQUISITION

37. The effects of the acquisition set forth in Paragraph 11 may be substantially to lessen competition or tend to create a monopoly in the relevant markets, in violation of Section 7 of the Clayton Act, as amended, and the acquisition constitutes an unfair method of competition and unfair act and practice within the meaning of Section 5 of the Federal Trade Commission Act, as amended, in the following ways among others:

(a) eliminating substantial competition between Kaiser and Lavino and among Kaiser, Lavino and other competitors in the relevant markets;

(b) significantly increasing the already high levels of concentration in the relevant markets;

(c) significantly raising the already high barriers to entry into the relevant markets;

(d) increasing and threatening to still further increase concentration in the relevant markets through additional mergers by other competitors; and

(e) strengthening the position of Kaiser in the relevant markets.

VII. VIOLATIONS CHARGED

38. The acquisition set forth in Paragraph 11 constitutes a violation of Section 7 of the Clayton Act, as amended, (15 U.S.C. 18).

39. The acquisition set forth in Paragraph 11 constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45).

FINAL ORDER RETURNING MATTER TO ADJUDICATION
AND DISMISSING COMPLAINT

On September 25, 1984, this matter was withdrawn from adjudication for consideration by the Commission of a proposed consent agreement. The Commission accepted the proposed consent and placed it on the public record on May 8, 1985, for comment pursuant to Section 3.25(f) of the Commission's Rules of Practice and Procedures.

Having considered the views of the parties to the consent and the comment received from the public, the Commission has determined that the public interest would best be served by rejecting the consent agreement and dismissing the complaint. In this instance, the respondent has transferred control of all of its operating refractories facilities in the United States to other entities and has stated that it has no intention of engaging in the refractories business. Such being the case, the public interest no longer requires that respondent be subject to a Commission order. Therefore

It is ordered, That this matter be returned to adjudication and

It is further ordered, That the complaint issued in the matter be, and it hereby is, dismissed.

Complaint

106 F.T.C.

IN THE MATTER OF
MONTANA BOARD OF OPTOMETRISTS

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

Docket C-3161. Complaint, Aug. 29, 1985—Decision, Aug. 29, 1985

This consent order requires the Montana Board of Optometrists (the Board), among other things, to cease adopting or maintaining any rule, regulation, policy or course of conduct that has the effect of prohibiting, restricting, or discouraging any qualified person from advertising price-related terms or claims of professional superiority; and declaring such advertising to be illegal, unethical, or unprofessional. The Board is barred from taking or threatening disciplinary action against any individual or organization that advertises price-related terms and claims of professional superiority; and from inducing or assisting others to take any of the prohibited actions. The Board is additionally required to distribute a copy of the order and an explanatory announcement to all optometrists licensed to practice in Montana; and provide such material to all those applying for a license for a period of five years.

Appearances

For the Commission: *Cynthia Wicker.*

For the respondent: *Geoffrey Brazier*, Montana State Department of Commerce, Helena, Mont.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, *as amended*, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, ("Commission"), having reason to believe that the Montana Board of Optometrists ("Board") has violated Section 5 of the Federal Trade Commission Act, and that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

RESPONDENT

1. Respondent Montana Board of Optometrists is organized, exists and transacts business under the laws of the State of Montana, with its principal office and place of business located at The Department of Commerce, 1424 9th Avenue, Helena, Montana. Mont. Code Ann. Titles 2 and 37. The Board is subject to the Commission's jurisdiction