

IN THE MATTER OF
ATLANTIC RICHFIELD COMPANY

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION AND CLAYTON ACTS

Docket 9089. Order, Oct. 29, 1979—Set Aside Order, Dec. 30, 1985

The Federal Trade Commission has set aside a 1979 order with Atlantic Richfield Co. (ARCO) (94 F.T.C. 1054), so that the company is no longer required to divest its half-interest in Anamax, a joint venture. The Commission cited developments in the copper industry as rendering the Anamax divestiture and the original order unnecessary.

ORDER TERMINATING DECISION AND ORDER ISSUED OCTOBER 29, 1979

On August 30, 1985, Atlantic Richfield Company ("Arco") filed its "Request To Reopen And Set Aside Consent Order" ("Request"). The Request was submitted pursuant to Paragraphs XV and XVI of the Commission's Decision and Order issued on October 29, 1979 [94 F.T.C. 1054], ("the order") and also pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b) and Section 2.51 of the Commission's Rules of Practice. The Request asked the Commission to reopen the proceeding and terminate the order in its entirety. After reviewing respondent's Request and other relevant information, the Commission has concluded that Arco has made a satisfactory showing that changed conditions of fact and public interest considerations require that the order be terminated.

This proceeding arose out of Arco's merger with The Anaconda Company ("Anaconda") in 1976. The complaint was issued under Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act and charged that Arco's acquisition of Anaconda would eliminate three forms of competition: (1) actual competition between Arco and Anaconda in the production and sale of uranium oxide; (2) potential competition between Arco and producers of uranium oxide, including Anaconda; and (3) potential competition between Arco and producers of copper, including Anaconda, in copper mine production and in the production and sale of refined copper. At the time the complaint was issued, Arco, in addition to being a petroleum company, was a producer of uranium oxide through a joint venture operating in Clay West, Texas, with Niagara Mohawk Power Company and United States Steel Corporation. Anaconda was both a producer of uranium oxide and a miner and refiner of copper.

On November 2, 1976, a hearing was held in the United States

District Court for the Eastern District of Virginia on the Commission's motion for a preliminary injunction against the merger pending completion of the Commission's administrative lawsuit. On the same day, Arco announced a plan to sell its interest in the Clay West uranium joint venture to Niagara Mohawk and United States Steel. Later that day the district court denied the Commission's motion. The sale of Arco's Clay West interest was consummated on December 6, 1976. Thereafter, on January 12, 1977, the United States Court of Appeals for the Fourth Circuit affirmed the judgment of the district court, and the merger was consummated later that same day. *FTC v. Atlantic Richfield Company*, 549 F.2d 289 (4th Cir. 1977). The Commission's administrative proceeding continued and the parties subsequently entered into settlement negotiations. On October 29, 1979, the Commission issued its order in this matter.

The order required the divestiture of five specified copper interests that had been owned by Anaconda at the time it was acquired by Arco. These interests were the Heddleston copper and molybdenum mineral property; the Ann Mason copper mineral property; the Bear copper mineral property; its 20 percent stock holding in Inspiration Consolidated Copper Company; and its 50 percent joint venture interest in the Anamax Mining Company ("Anamax"), a copper miner and producer of copper concentrate and electrowon refined grade copper. The time allowed for Arco to accomplish divestiture ranged from a minimum of one year for the Inspiration stock to five years for the Anamax interest. The Order also imposed an acquisition ban and joint venture restrictions on Arco during a "limitation period" defined in the order. The limitation period was to expire after five years (on October 29, 1984), but was subject to a proviso extending the period for as much as an additional five years if the required divestitures had not been completed in accordance with a specified timetable.

Arco has accomplished all of the divestitures required by the order with the exception of its interest in Anamax. Arco sold its interest in Inspiration Consolidated Copper Company prior to issuance of the order. The Ann Mason and Bear properties were sold on August 25, 1981. The Heddleston property was sold to Asarco with the prior approval of the Commission as required by the order in September 1981. Since Arco did not divest its interest in Anamax within four years of the effective date of the order, the limitation period has yet to expire.

Respondent has established that there have been significant changes in the factual circumstances that prevailed at the time the complaint and order issued so that it is now appropriate to terminate the order. These changes include a decline in the market position of

Arco's copper operations; and a sharp curtailment in the copper operations of Anamax.

Perhaps the most significant development since the order issued has been the inability of U.S. copper producers to sustain the two-tier pricing system which historically kept the U.S. price substantially above the price of copper sold outside the United States. Request, pp. 23-24. Imports of refined copper accounted for 27 percent of domestic refined copper consumption in 1983 as compared with 10 percent in 1979 and 9 percent in 1975. Request, p. 25 and Table I. The major exporting nations have kept producing at high levels while United States producers have been forced to cut back output. According to the International Trade Commission

In a broad sense, the copper market is a world market. Both tariffs and transportation costs are small compared with the value of copper. As a result, arbitrage keeps the price of copper relatively the same throughout the world.

ITC, *Unwrought Copper: Report to the President on Investigation No. TA-201-52 Under Section 201 of the Trade Act of 1974* at A-56 (July 1984) (hereinafter "*ITC Report*"). U.S. producers "have no choice but to follow the depressed and declining world price of copper." *ITC Report* at 43-44. According to the ITC

The current depressed state of the domestic copper industry reflects existing world market conditions and, therefore, is predominantly due to the low level of world prices which are transmitted to the U.S. industry through imports. Current world prices have been driven low by a combination of world overproduction and a decline in demand. In particular, a number of developing countries, with copper as their main source of foreign exchange, are continuing to produce and market increasing quantities of copper despite a worldwide glut, with plans to expand capacity even further in the near future.

ITC Report at 6-7. A substantial number of domestic copper production facilities have been permanently closed since 1979. *ITC Report* at A-22, A-23.

These developments have also had a significant adverse effect on Arco's own copper operations. In the period since the order was issued Arco has shut down all of its wholly-owned copper mines and has closed and scrapped its copper smelter and copper refinery. Apart from its interest in Anamax, respondent has not produced refined copper since the fall of 1980 and has not mined copper since June 1983. Arco has written down all of its copper and other non-coal mineral operations and is in the process of permanently exiting from these businesses. Request, p. 3. Likewise, the Anamax copper operations have been sharply curtailed. The only active Anamax copper operation is the processing of stockpiled copper oxide ore at the Twin Buttes oxide plant. Request, p. 36. In the opinion of the Commission,

the developments referred to above have rendered the divestiture of Arco's interest in Anamax unnecessary and have also made it appropriate to terminate the restriction on acquisitions and joint ventures imposed by the Order.

Accordingly, *it is ordered*, that this matter be, and it hereby is, reopened, and that the Commission's Decision and Order issued on October 29, 1979, shall terminate as of the effective date of this order.

IN THE MATTER OF
FEDERATED DEPARTMENT STORES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND FAIR CREDIT REPORTING ACTS

Docket C-3175. Complaint, Dec. 30, 1985—Decision, Dec. 30, 1985

This consent order requires a Cincinnati, Ohio retailer and its division operating 14 department stores in Texas (Foley's), among other things, to inform rejected credit applicants if it used information from credit reporting agencies as a basis for denying credit, and the name and address of the credit reporting agencies used. The order requires respondents to comply with the provisions of the Fair Credit Reporting Act, and is binding on all of Federated's divisions. Additionally, Foley's is required to review all credit applications rejected between January 1983 and February 1985 and send appropriate FCRA notices to all consumers who did not receive them.

Appearances

For the Commission: *Kristen L. Malmberg.*

For the respondents: *Michael Sohn, Arnold & Porter, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Fair Credit Reporting Act, 15 U.S.C. 1681, *et seq.* and the Federal Trade Commission Act, 15 U.S.C. 41, *et seq.* and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Federated Department Stores, Inc., a corporation, hereinafter referred to as respondent, through its Foley's Division, has violated the provisions of said Acts, 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. For the purposes of this complaint and the accompanying order the following definitions are applicable:

A. The terms *consumer*, *consumer report*, *consumer reporting agency*, and *person* shall be defined as provided in Section 603 of the Fair Credit Reporting Act, 15 U.S.C. 1681a.

B. The term *no file response* shall be defined as a consumer report consisting of a response by a consumer reporting agency to respondent's request for information on a given credit applicant indicating