

IN THE MATTER OF
LITHIUM CORPORATION OF AMERICA

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

Docket C-3194. Complaint, July 22, 1986—Decision, July 22, 1986

This consent order prohibits, among other things, a Gastonia, North Carolina chemical company from entering into any agreements fixing prices or restricting sales of any lithium product. Additionally, respondent is prohibited from acting as an agent for any lithium producer when such action might unreasonably restrain competition.

Appearances

For the Commission: *Allee A. Ramadhan.*

For the respondent: *David L. Foster, Willkie, Farr & Gallagher,*
New York City.

COMPLAINT

The Federal Trade Commission, having reason to believe that Glithco Energy Corporation (Glithco), formerly Lithium Corporation of America, a wholly owned subsidiary of Gulf Resources and Chemical Corp., a corporation subject to the jurisdiction of the Commission has violated the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, 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 as follows:

I. DEFINITION

1. *Lithium product(s)* means any lithium chemical mined, extracted or milled from a natural resource including but not limited to: (a) lithium ore (petalite, lepidolite or spodumene); (b) lithium carbonate; (c) lithium hydroxide; (d) lithium chloride; and (e) lithium sulfate.

II. RESPONDENT

2. Lithium Corporation of America (LCA) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware maintaining its principal place of business at 449 North Cox Road, Gastonia, North Carolina.

3. On or about July 19, 1985, LCA acquired substantially all of the

assets of Glithco Energy Corporation, formerly Lithium Corporation of America, a wholly owned subsidiary of Gulf Resources and Chemical Corporation.

III. JURISDICTION

4. LCA is and, during all times relevant herein Glithco, was engaged in the business of mining, extracting and milling of lithium chemicals from a natural resource and selling lithium products in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44. LCA is subject to the jurisdiction of the Federal Trade Commission.

IV. CONDUCT

5. Since at least 1980 and continuing up to at least June 1984, Glithco, China Metallurgical Import and Export Corporation (CMIEC) and Xinjiang Non-Ferrous Metals Corporation (XNMC) were engaged in an agreement, combination and conspiracy in unreasonable restraint of lithium products trade and commerce. Said unlawful agreement, combination and conspiracy were to the prejudice and injury of the public and of Glithco's customers and competitors and constituted an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act. There exists the cognizable danger that the unfair method of competition as alleged herein may resume and continue in the absence of the relief requested.

6. The unlawful combination and conspiracy has consisted of an agreement, understanding and concert of action between Glithco and CMIEC and XNMC, the effect of which has been to restrain trade in lithium hydroxide and/or other lithium products by Glithco's purchase of lithium hydroxide manufactured by XNMC and sold by CMIEC; and Glithco's actions to restrict or limit supplies of lithium hydroxide by soliciting an agreement with CMIEC that CMIEC would refuse to deal with chemical traders seeking to purchase lithium.

V. EFFECTS AND VIOLATION

7. The conduct, hereinabove alleged, has had the following effects, among others:

A. Competition between Glithco, CMIEC and XNMC in the sale of lithium hydroxide and other lithium products has been reduced or eliminated;

B. Competition between Glithco and other chemical traders of lithium hydroxide and other lithium products has been reduced or eliminated as a result of Glithco's exclusive distribution agreement with

CMIEC and Glithco's actions to ensure that CMIEC would refuse to deal with such traders;

C. Buyers of lithium hydroxide and other lithium products have been deprived of free and open competition in the purchase of such lithium products by Glithco's actions to ensure that CMIEC would refuse to deal with chemical traders; and

D. The importation of lithium hydroxide and other lithium products into the United States has been restrained.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of 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 Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that 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 Lithium Corporation of America (LCA) is organized, existing and doing business under and by virtue of the laws of the State of Delaware maintaining its principal offices at 449 North Cox Road, Gastonia, North Carolina.

2. On or about July 19, 1985, respondent acquired substantially all of the assets of Glithco Energy Corporation, formerly Lithium Corporation of America, a wholly owned subsidiary of Gulf Resources and Chemical Corporation.

3. 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 the purpose of this order, the following definitions shall apply:

1. *LCA* means Lithium Corporation of America, as well as its officers, employees, divisions, subsidiaries, successors, assigns and the officers or employees of LCA's divisions, subsidiaries, successors and assigns.

2. *Lithium product(s)* means any lithium chemical mined, extracted or milled from a natural resource including but not limited to: (a) lithium ore (petalite, lepidolite or spodumene); (b) lithium carbonate; (c) lithium hydroxide; (d) lithium chloride; and (e) lithium sulfate.

3. *Person* means any natural person, corporate entity (including subsidiaries thereof), partnership, joint venture, trust, association, governmental or other legal entity whether foreign or domestic.

4. *Lithium seller* means any person engaged in the mining, extracting, milling or sale of any lithium product.

5. *Lithium producer* means any person engaged in the production of any lithium product by mining, extracting, or milling of such product from a natural resource, or the exclusive or substantially exclusive agent or distributor of such person in the sale or distribution of such lithium product. Lithium producer does not include any joint venture between LCA and other persons none of which is engaged in the production by mining, extracting or milling of any lithium product or is the exclusive or substantially exclusive agent or distributor of such person in the sale or distribution of such lithium product.

6. *Nonpublic information* means trade secrets or commercial or financial information which is confidential and has not been disseminated to the public.

7. *Sub-HSR transaction* means acquiring, directly or indirectly, the stock, share capital or assets of or any other interest in any lithium seller that is not reportable under the provisions of Section 7A of the Clayton Act, 15 U.S.C. 18a, and the rules promulgated thereunder but would be reportable if:

A. the Size-of-the-Parties Test as set forth in Section 7A(a)(2) of the Clayton Act were deemed inapplicable; and

B. five (5) million dollars were substituted for fifteen (15) million dollars in the size of transaction test set forth in Section 7A(a)(3)(B) as well as The Minimum Dollar Value Exemption set forth in Rule 200.20(a).

8. *Tolling* means the secondary-recovery of any lithium chemical by a person for which such services are compensated.

I.

It is ordered, That LCA shall cease and desist, directly or indirectly, or through any corporate or other device in connection with the offering for sale, sale or distribution of any lithium product in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, from, directly or indirectly:

A. Entering into, cooperating in or carrying out any agreement, combination, conspiracy, understanding or planned common course of action between or among itself and any lithium producer to:

1. Adopt, establish, fix or maintain, directly or indirectly, the price, terms or conditions of sale for the sale of any lithium product to any third person; or

2. Refuse to deal with any third person seeking to purchase any lithium product from any lithium producer.

B. Soliciting, inducing, coercing, intimidating or compelling any lithium producer to refuse to deal with any person seeking to purchase any lithium product.

C. Taking any action to communicate, furnish, exchange, receive or discuss, directly or indirectly, with any lithium producer any nonpublic information relating to:

1. The price, terms or conditions of sale for any lithium product;

2. The costs of mining, extracting, milling, or selling any lithium product;

3. Forecasts of sales or supply of any lithium product; or

4. Plans for marketing any lithium product.

Provided, however, That nothing contained in Subparagraph C of this Paragraph shall prohibit LCA from:

Providing to or receiving from any lithium producer such information as is reasonably necessary for and solely related to the good faith negotiating for, entering into, or carrying out (a) a purchase, sale or tolling arrangement of any lithium product between LCA and such lithium producer; (b) acquisition of LCA or a substantial portion of its business or the acquisition by LCA of all or a substantial part of any lithium producer; and (c) any joint venture involving another lithium producer that is not reportable under Paragraph IV of this order.

II.

It is further ordered, That LCA shall cease and desist, directly or indirectly, or through any corporate or other device in connection with the offering for sale, sale or distribution of any lithium product in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, from purchasing from any lithium producer and reselling, or acting as an agent for any lithium producer in the sale of, any lithium product where such purchase, resale or agency unreasonably restrains competition.

III.

Paragraphs I and II of this order do not prohibit conduct that is permitted by the Export Trading Company Act of 1982, 15 U.S.C. 4001-4021 (1982), or the Webb-Pomerene Act, 15 U.S.C. 61-66 (1982), or any amendments thereto, or conduct to which Subsection (a) of Section 5 of the Federal Trade Commission Act does not apply under the Foreign Trade Antitrust Improvements Act of 1982, Public Law 97-290, Title IV, or any amendments thereto. If within five (5) years from the date this order becomes final, an application is made by LCA under Title III of the Export Trading Company Act of 1982 for an Export Trade Certificate of Review relating to any lithium product, copies of the application and all documents filed by LCA in support thereof shall be filed simultaneously with the Commission.

IV.

It is further ordered, That for a period of five (5) years from the date this order becomes final, LCA shall within twenty (20) days after entering into any sub-HSR transaction provide the Federal Trade Commission written notification of such transaction and provide such information for LCA and the acquired party as required by the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended.

V.

It is further ordered, That LCA shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order. LCA also shall submit such further written reports as the staff of the Commission may from time to time request in writing to assure compliance with this order.

VI.

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

Chairman Oliver and Commissioner Strenio did not participate.

Set Aside Order

108 F.T.C.

IN THE MATTER OF

UNITED BRANDS COMPANY

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT*Docket 8835. Order, May 14, 1974—Set Aside Order, July 29, 1986*

The Federal Trade Commission has set aside a 1974 order (83 F.T.C. 1614) that required respondent to file special reports with the FTC about the company's access to land commercially suitable for lettuce cultivation. The Commission ruled that any competitive issues that might be raised do not exist since respondent is no longer in the lettuce business.

ORDER REOPENING AND SETTING ASIDE ORDER

REQUIRING FILING OF SPECIAL REPORT ISSUED ON MAY 14, 1974

By a petition filed on April 29, 1986, United Brands Company ("UBC") requests that the Commission reopen the proceeding in Docket No. 8835 and modify the Order Requiring Filing of Special Report issued by the Commission on May 14, 1974. Pursuant to Section 2.51 of the Commission's Rules of Practice, UBC's petition was placed on the public record for comment. No comments were received.

Upon consideration of UBC's petition and supporting materials, and other relevant information, the Commission now finds that changed conditions of fact and the public interest warrant reopening the proceeding and setting aside the Order Requiring Filing of Special Report. The record demonstrates that the competitive concerns the order intended to address no longer exist and termination of the order to relieve UBC of compliance costs is in the public interest.

Accordingly,

It is ordered, That this matter be, and hereby is, reopened and that the Commission's Order Requiring Filing of Special Report be, and hereby is, set aside.