

Complaint

119 F.T.C.

IN THE MATTER OF

SULZER LIMITED

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 C-3559. Complaint, Feb. 23, 1995--Decision, Feb. 23, 1995

This consent order requires, among other things, Sulzer, a Swiss firm to divest, within six months, a copy of all the information necessary to purchase ingredients for, to manufacture and to sell aluminum polyester powder -- equivalent to Sulzer's Amdry 2010 -- to a Commission-approved acquirer. If the divestiture is not completed on time, the consent order permits the Commission to appoint a trustee to divest copies of both the Amdry 2010 information and all product information relating to the acquired firms aluminum polyester powder. In addition, the consent order requires the respondent, for ten years, to obtain Commission approval before acquiring any assets in the aluminum polyester powder market.

Appearances

For the Commission: *Ann B. Malester, Claudia Higgins and Mary Lou Steptoe.*

For the respondent: *Joel Mitnick and Neal Stoll, Skadden, Arps, Slate, Meagher & Flom, New York, N.Y. Sutton Keaney, Winthrop, Stimson, Puntham & Roberts, New York, N.Y.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent Sulzer Limited, a corporation, subject to the jurisdiction of the Commission, has agreed to acquire all of the assets of the Metco Division of The Perkin-Elmer Corporation, 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 ("FTC Act"), 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. DEFINITIONS

1. "*Aluminum Polyester Powder*" means a thermal spray material consisting of wholly aromatic polyester and aluminum silicon that is applied via thermal spray equipment to aircraft turbine engines.

2. "*Wholly Aromatic Polyester*" means wholly aromatic polyester that is used as an input in Aluminum Polyester Powder.

II. RESPONDENT

3. Respondent Sulzer is a corporation organized and existing under the laws of the Country of Switzerland, with its headquarters located at CH-8401, Winterthur, Switzerland.

4. Respondent is, and at all times relevant to this proceeding has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

III. ACQUIRED COMPANY

5. Metco is a division of The Perkin-Elmer Corporation, which is a corporation organized and existing under the laws of the State of New York, with its headquarters located at 761 Main Avenue, Norwalk, Connecticut.

6. Metco is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

IV. ACQUISITION

7. On or about April 18, 1994, Sulzer and Metco entered into an agreement whereby Sulzer will acquire all of the assets of the Metco Division of The Perkin-Elmer Corporation ("Acquisition").

V. THE RELEVANT MARKET

8. For purposes of this complaint, the relevant line of commerce in which to analyze the Acquisition is the manufacture and sale of Aluminum Polyester Powder.

9. For purposes of this complaint, the relevant section of the country is the United States.

10. The relevant market set forth in paragraphs eight and nine is highly concentrated, whether measured by Herfindahl-Hirschmann Indices ("HHI") or two-firm and four-firm concentration ratios.

11. Entry into the relevant market would not be timely, likely or sufficient to deter or counteract the adverse competitive effects described in paragraph thirteen of the complaint because of the difficulties in obtaining an adequate source of Wholly Aromatic Polyester and because the original turbine engine manufacturers must conduct tests to verify that the Aluminum Polyester Powder meets their standards before approving its use.

12. Sulzer and Metco are actual competitors in the relevant market.

VI. EFFECTS OF THE ACQUISITION

13. The effect of the Acquisition may be substantially to lessen competition and to tend to create a monopoly in the relevant marketing violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, in the following ways, among others:

- a. By eliminating direct actual competition between Sulzer and Metco;
- b. By increasing the likelihood that Sulzer will unilaterally exercise market power; and
- c. By increasing the likelihood that Aluminum Polyester Powder customers will be forced to pay higher prices.

14. All of the above increase the likelihood that firms in the relevant market will increase prices and restrict output both in the near future and in the long term.

VII. VIOLATIONS CHARGED

15. The acquisition agreement described in paragraph seven constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

16. The acquisition described in paragraph seven, if consummated, would constitute a 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 the proposed acquisition by respondent of certain assets and businesses of the Metco Division of The Perkin-Elmer Corporation, and the respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations 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; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true 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 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, and having duly considered the comment filed thereafter by an interested person pursuant to Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Sulzer Limited ("Sulzer") is a corporation organized and existing under the laws of the Country of Switzerland with its offices and principal place of business at CH-8401, Winterthur, Switzerland.

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

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*Sulzer*" means Sulzer Limited, its directors, officers, employees, agents and representatives, its domestic and foreign predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, employees, agents and representatives of its domestic and foreign predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures.

B. "*Metco*" means the Metco Division of The Perkin-Elmer Corporation.

C. "*Commission*" means the Federal Trade Commission.

D. "*Acquisition*" means the acquisition of certain assets of Metco by Sulzer.

E. "*Aluminum polyester powder*" means a thermal spray material consisting of wholly aromatic polyester and aluminum silicon that is applied via thermal spray equipment to aircraft turbine engines.

F. "*Amdry 2010*" means Sulzer's aluminum polyester powder marketed in the United States under the name "Amdry 2010."

G. "*Sumitomo Polyester*" means wholly aromatic polyester (polyoxybenzoyl homopolymer) that Sumitomo Chemical Company Limited produces for Sulzer according to Sulzer's specifications for use as an input in Amdry 2010.

H. "*Sulzer aluminum silicon*" means the particular grade, specification, and type of aluminum silicon used in Amdry 2010.

I. "*Amdry 2010 Ingredients*" means Sumitomo Polyester and Sulzer aluminum silicon.

J. "*Amdry 2010 Information*" means a copy of all information necessary to purchase Amdry 2010 Ingredients and all information necessary for the manufacture and sale of Amdry 2010, including but not limited to:

1. All product information related to Sumitomo Polyester and related know-how, including (without limitation) its morphology, the name(s) of the supplier(s) of Sumitomo Polyester, all particle specifications, formulas, processes, technology, trade secrets, manufacturing information, plans, drawings and data and other tangible embodiments of know-how used to acquire commercially acceptable Sumitomo Polyester for use in Amdry 2010;

2. All product information related to Sulzer aluminum silicon, including (without limitation) its morphology, the name(s) of the supplier(s) of Sulzer aluminum silicon, all product specifications, formulas, processes, technology, trade secrets, manufacturing information, plans, drawings and data and other tangible embodiments of know-how used to acquire commercially acceptable Sulzer aluminum silicon for use in Amdry 2010;

3. All information related to the manufacture of Amdry 2010, including (without limitation) all production manuals, training materials, lists of equipment used in the manufacturing process, formulas, process, all manufacturing standards and procedures, quality control specifications, technology, trade secrets, manufacturing information, plans, drawings and data and other tangible embodiments of know-how used to manufacture commercially acceptable Amdry 2010; and

4. All information related to the sale of Amdry 2010, including (without limitation) product brochures, customer lists, training materials, and other tangible embodiments of know-how used in the sale of Amdry 2010.

■ K. "*Amdry 2010 Equivalent*" means an aluminum polyester powder that is chemically equivalent to Amdry 2010 and that is not produced by Sulzer or Metco.

L. "*Original equipment manufacturers*" means General Electric Aircraft Engines Division, Textron Lycoming, and the Garrett Division of Allied Signal, and their successors and assigns.

M. "*Metco 601*" means Metco's aluminum polyester powder marketed in the United States under the name "Metco 601."

N. "*Carborundum Ekonol Polyester*" means wholly aromatic polyester that The Carborundum Company produces for Metco according to Metco's specifications for use as an input in Metco 601.

O. "*Metco aluminum silicon*" means the particular grade, specification, and type of aluminum silicon used in Metco 601.

P. "*Metco 601 Ingredients*" means Carborundum Ekonol Polyester and Metco aluminum silicon.

Q. "*Metco 601 Information*" means a copy of all information necessary to purchase Metco 601 Ingredients and all information necessary for the manufacture and sale of Metco 601, including but not limited to:

1. All product information related to Carborundum Ekonol Polyester and related know-how, including (without limitation) its morphology, the name(s) of the supplier(s) of Carborundum Ekonol Polyester, all particle specifications, formulas, processes, technology, trade secrets, manufacturing information, plans, drawings and data and other tangible embodiments of know-how used to acquire commercially acceptable Carborundum Ekonol Polyester for use in Metco 601;

2. All product information related to Metco aluminum silicon, including (without limitation) its morphology, the name(s) of the supplier(s) of Metco aluminum silicon, all product specifications, formulas, processes, technology, trade secrets, manufacturing information, plans, drawings and data and other tangible embodiments of know-how used to acquire commercially acceptable Metco aluminum silicon for use in Metco 601;

3. All information related to the manufacture of Metco 601, including (without limitation) production manuals, training materials, lists of equipment used in the manufacturing process, formulas, process, all manufacturing standards and procedures, quality control specifications, technology, trade secrets, manufacturing information, plans, drawings and data and other tangible embodiments of know-how used to manufacture commercially acceptable Metco 601; and

4. All information related to the sale of Metco 601, including (without limitation) product brochures, customer lists, training materials, and other tangible embodiments of know-how used in the sale of Metco 601.

R. "*Metco 601 Equivalent*" means an aluminum polyester powder that is chemically equivalent to Metco 601 and that is not produced by Metco or Sulzer.

II.

It is ordered, That:

A. Sulzer shall, absolutely and in good faith, divest the Amdry 2010 Information within six (6) months of the date this order becomes final to an acquirer that will develop, manufacture, sell, and seek original equipment manufacturers' approvals for an Amdry 2010 Equivalent. Sulzer shall divest only to an acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission.

B. Sulzer shall provide all additional assistance, information and know-how reasonably necessary to the acquirer of the Amdry 2010 Information to help such acquirer receive all product approvals from the original equipment manufacturers necessary for the purchase of an Amdry 2010 Equivalent by such original equipment manufacturers or by any other person pursuant to standards and qualifications established by such manufacturer. Such assistance shall include but not be limited to the following:

1. Paying all costs of testing by or for the original equipment manufacturers for product approvals of an Amdry 2010 Equivalent;
2. Providing any training relevant to the production of an Amdry 2010 Equivalent to the acquirer;
3. Offering any technical assistance necessary to assist the acquirer in its development of an Amdry 2010 Equivalent; and
4. Any additional information or know-how reasonably necessary to the acquirer.

C. Sulzer shall submit to the Commission, within nine (9) months of the date the Commission approves the divestiture of the Amdry 2010 Information, an affidavit from each of the original equipment manufacturers certifying that each such manufacturer has either (1) individually approved an Amdry 2010 Equivalent manufactured by the Commission-approved acquirer of the Amdry 2010 Information for all uses for which Amdry 2010 is approved by such original

equipment manufacturer, or (2) individually approved any other person's aluminum polyester powder for all uses for which Amdry 2010 is approved by such original equipment manufacturer and that such manufacturer is not interested in approving an Amdry 2010 Equivalent manufactured by the Commission-approved acquirer of the Amdry 2010 Information for all uses for which Amdry 2010 is approved by such original equipment manufacturer.

D. The purpose of the divestiture of the Amdry 2010 Information is to enable the acquirer to become a viable competitor in the aluminum polyester powder market and to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint.

III.

It is further ordered, That:

A. If Sulzer has (1) not divested the Amdry 2010 Information within six (6) months of the date this order becomes final, or (2) not submitted affidavits as required by paragraph II.C. of this order, within nine (9) months of the date the Commission approves the divestiture of the Amdry 2010 Information, then the Commission may appoint a trustee to divest both the Amdry 2010 Information and the Metco 601 Information only to an acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Amdry 2010 Information and the Metco 601 Information is to enable the acquirer to become a viable competitor in the aluminum polyester powder market, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint. In the event the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, Sulzer shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(1) of the Federal Trade Commission Act, or

any other statute enforced by the Commission, for any failure by respondent to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph III.A. of this order, respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Sulzer, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in the marketing or manufacturing of chemicals. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondent of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest both the Amdry 2010 Information and the Metco 601 Information and to take all such steps as may be feasible and necessary to assist the acquirer of the Amdry 2010 Information and the Metco 601 Information to receive all product approvals from the original equipment manufacturers necessary for the purchase of an Amdry 2010 Equivalent or a Metco 601 Equivalent by such manufacturer or by any other person pursuant to standards and qualifications established by such manufacturer. Such assistance shall include but not be limited to the following:

- a. Requiring respondent to pay all costs of testing by or for the original equipment manufacturers for product approvals of an Amdry 2010 Equivalent or a Metco 601 Equivalent;
- b. Requiring respondent to provide any training relevant to the production of an Amdry 2010 Equivalent or a Metco 601 Equivalent to the acquirer;
- c. Requiring respondent to offer any technical assistance necessary to assist the acquirer in its development of an Amdry 2010 Equivalent or a Metco 601 Equivalent; and
- d. Requiring respondent to provide any additional information or know-how reasonably necessary to the acquirer.

3. Within ten (10) days after appointment of the trustee, respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture of both the Amdry 2010 Information and the Metco 601 Information and to provide the additional assistance as required by paragraph III.B.2. of this order.

4. From the date of appointment, the trustee shall have twelve (12) months to divest both the Amdry 2010 Information and the Metco 601 Information, to provide all additional assistance reasonably necessary to the acquirer, and to submit affidavits to the Commission from each of the original equipment manufacturers certifying that each has individually approved the Amdry 2010 Equivalent or the Metco 601 Equivalent manufactured by the Commission-approved acquirer of the Amdry 2010 Information and the Metco 601 Information for all uses for which Amdry 2010 or Metco 601 is approved by such original equipment manufacturer, and if such affidavits are not submitted, the trustee shall have an additional six (6) months thereafter to accomplish the divestiture of both the Amdry 2010 Information and the Metco 601 Information, to provide the additional assistance, and to submit the affidavits. If, however, at the end of the additional six (6) month period, the trustee believes that the original equipment manufacturers will approve the Amdry 2010 Equivalent or the Metco 601 Equivalent manufactured by the Commission-approved acquirer of the Amdry 2010 Information and the Metco 601 Information for all uses for which Amdry 2010 or Metco 601 is approved by such original equipment manufacturer, and will submit said affidavits to the Commission within a reasonable time, the time period for said approvals and submission of affidavits may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Amdry 2010 Information and the Metco 601 Information, or to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the

divestiture of the Amdry 2010 Information and the Metco 601 Information, the provision of additional assistance to the acquirer, and the approval of the Amdry 2010 Equivalent or the Metco 601 Equivalent by the original equipment manufacturers. Any delays caused by the respondent shall extend the time for the divestiture of the Amdry 2010 Information and the Metco 601 Information, the additional assistance to the acquirer, and the approvals by the original equipment manufacturers, under this paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondent's absolute and unconditional obligation to divest at no minimum price. If the trustee receives *bona fide* offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or such entities selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Sulzer and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divestiture of the Amdry 2010 Information and the Metco 601 Information and submission of the required affidavits from the original equipment manufacturers.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising out of, or in connection with, the performance of the trustee's duties,

including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in this paragraph of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture of the Amdry 2010 Information and the Metco 601 Information, the provision of all additional assistance reasonably necessary to the acquirer, and the submission of affidavits by each of the original equipment manufacturers as required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Amdry 2010 Information and the Metco 601 Information.

12. The trustee shall report in writing to respondent and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture.

IV.

It is further ordered, That:

A. For a ten (10) year period commencing on the date this order becomes final, Sulzer shall not enter into, obtain, make, carry out or enforce any exclusive agreements with Sumitomo Chemical Company Limited or otherwise take any action whatsoever, directly or indirectly, that would prevent Sumitomo Chemical Company Limited from selling Sumitomo Polyester to any other person. Within thirty (30) days after the order becomes final, respondent shall provide a copy of the order to each person at Sumitomo Chemical Company Limited with whom respondent has contact in connection with the purchase of Sumitomo Polyester.

B. If a trustee is appointed and the Metco 601 Information is divested pursuant to paragraph III.A. of this order, then for a ten (10)

year period commencing on the date the Metco 601 Information is divested, Sulzer shall not enter into, obtain, make, carry out or enforce any exclusive agreements with The Carborundum Company or otherwise take any action whatsoever, directly or indirectly, that would prevent The Carborundum Company from selling Carborundum Ekonol Polyester to any other person. Within thirty (30) days after the trustee is appointed, respondent shall provide a copy of this order to each person at The Carborundum Company with whom respondent or Metco has contact in connection with the purchase of Carborundum Ekonol Polyester.

V.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, respondent shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, at the time of such acquisition engaged in, or within the six months preceding such acquisition engaged in, the manufacture, sale, or distribution of aluminum polyester powder in the United States; or

B. Acquire any assets used for or previously used for (and still suitable for use for) the manufacture, sale, or distribution of aluminum polyester powder in the United States.

VI.

It is further ordered, That:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until respondent has fully complied with the provisions of paragraphs II. and III. of this order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with paragraphs II. and III of this order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraphs II. and III. of the

order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture.

B. One (1) year from the date this order becomes final, and annually for the next nine (9) years on the anniversary of the date this order becomes final, and at such other times as the Commission may require, respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with paragraphs IV. and V. of this order.

VII.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent 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 respondent that may affect compliance obligations arising out of the order.

VIII.

It is further ordered, That, for the purpose of determining or securing compliance with this order, subject to any legally recognized privilege, and upon written request with reasonable notice to Sulzer made to its General Counsel, respondent shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon five (5) days notice to respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent, who may have counsel present regarding such matters.

IN THE MATTER OF

RED APPLE COMPANIES, INC., ET AL.

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 9266. Complaint, May 27, 1994--Decision, Feb. 28, 1995

This consent order requires, among other things, three New York-based companies and their officer to divest six supermarkets, within 12 months, to a Commission-approved acquirer or acquirers. If the respondents fail to satisfy the divestiture requirements, the consent order permits the Commission to appoint a trustee to divest supermarkets to satisfy the terms of the order. The consent order also prohibits the respondents, for ten years, from acquiring, without prior Commission approval, any supermarket or any interest in an entity that owns or operates a supermarket in New York County south of 116th Street. In addition, the respondents, for ten years, are prohibited from entering into or enforcing any restrictions that would prevent any person acquiring any supermarket owned or operated by any respondent in New York County south of 116th Street from operating the stores as supermarkets.

Appearances

For the Commission: *Ronald Rowe, James Fishkin and Mary Lou Steptoe.*

For the respondents: *Jonathan Honig and Martin Bring, Lowenthal, Laudau, Fishcher & Bring, New York, N.Y.*

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 ("Commission"), having reason to believe that respondents Red Apple Companies, Inc., a corporation, John A. Catsimatidis, an individual, Supermarket Acquisition Corp., a corporation, and Designcraft Industries, Inc. (d/b/a Sloan's Supermarkets, Inc.), a corporation, all subject to the jurisdiction of the Commission, have acquired certain assets of Sloan's Supermarkets, Inc. (a/k/a CKMR Corporation), 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, as amended, 15 U.S.C. 45,