

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



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In the Matter :
of : Docket No. 5253
NATIONAL LEAD COMPANY et al. :
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EXCEPTIONS OF RESPONDENT, ANACONDA COPPER
MINING COMPANY, TO TRIAL EXAMINER'S RECOM-
MENDED DECISION AND TO SAID TRIAL EXAM-
INER'S FAILURE TO INCLUDE PROPOSED FIND-
INGS AND CONCLUSIONS REQUESTED BY SAID
RESPONDENT

COMES now the respondent, ANACONDA COPPER MINING COMPANY (hereinafter referred to as "Anaconda"), by its attorneys, CHADBOURNE, WALLACE, PARKE & WHITESIDE, and, pursuant to Rule XXIII of the Rules of Practice of this Commission, submits the following exceptions to the Trial Examiner's Recommended Decision herein and to the failure of said Trial Examiner to include proposed findings and conclusions heretofore requested by this respondent under Rule XXI of said Rules of Practice.

REPRODUCED AT THE NATIONAL ARCHIVES

EXCEPTIONS TO SECTION II OF THE RECOMMENDED
DECISION ENTITLED "PLEADINGS AND ISSUES"

1. Page 3, first unnumbered paragraph*, Anaconda excepts to the action of the Examiner in treating it and International Smelting and Refining Company as one and the same for the reason that such assumption is not supported by the record, is opposed to the reliable and probative evidence that has been received and contrary to the law. [Tr. 3537-3538]

Martin v. Development Co. of America, 240 Fed. 42 (C.C.A. 9th, 1917);

Majestic Company v. Orpheum Circuit, 21 F. (2d) 720 (C.C.A. 8th, 1927);

Esmond Mills v. Commissioner of Internal Revenue, 132 F. (2d) 753 (C.C.A. 1st, 1943);

Schenley Corporation v. United States, 326 U.S. 432 (1945).

2. Page 5, second unnumbered paragraph from bottom of page, Anaconda excepts to this paragraph as not constituting a complete and accurate summary of its answer. [Anaconda's answer to amended complaint.]

* The pages and paragraphs referred to at the outset of each exception identify that portion of the Trial Examiner's Recommended Decision to which exception is being taken.

3. Page 7, Anaconda excepts to the first three full sentences appearing at the top of the page for the reason that important parts of the evidence have not been set forth in the Recommended Decision, much reliable and substantial evidence has been ignored and little attention has been paid to the greater weight of the evidence herein.

EXCEPTIONS TO SECTION III OF THE RECOMMENDED
DECISION ENTITLED "REPORT UPON THE EVIDENCE"

COUNT I

4. Anaconda excepts to the findings as to it in the following enumerated Paragraphs where it is referred to as "Anaconda" or by such collectives as "respondents," "all respondents," "as between respondents," "each respondent," "other respondents," "competitors" or "smaller competitors" on the ground that each and all of such findings are unsupported by the record as to this respondent: Page 9, (1-e); Page 14, (4) and (4-a); Page 16, (4-b); Page 18, (4-c); the first unnumbered paragraph on Page 19; Page 19, (5-a1); Page 20, (5-a2) and (5-a3); Page 21, (5-a4) and (5-a5); Page 22, (5-b2); Page 24, (5-b5); Page 25, (5-b6); Page 26, (5-c1); Page 27, (5-c2); Page 28, (5-c3) and

(5-a4); Page 29, (5-c5); Page 30, (5-c6); Page 33, (5-c7) and (5-c8); Page 34, (5-cl1) and (5-d); Page 35, (5-e); Page 37, (6-c) and (6-d); Page 39, (7-a3), (7-a4), (7-a5) and (7-a6); Page 40, (7-a8), (7-a9) and (7-b1); Page 41, (7-b2); Page 42, (7-b4); Page 43, (7-cl), (7-c2) and (7-c3); Page 44, (7-c4), (7-c5) and (7-d1); Page 45, (7-d2) and (7-d4), and Page 46, (7-d5).

5. Anaconda adopts as its own and incorporates herein by reference, each and every exception and the authorities in support thereof to the Examiner's Recommended Decision which are taken by the other respondents herein to his report upon the evidence and conclusions as to conspiracy, collusion, agreement and cooperation between or among any or all of said respondents.

COUNT II

6. Anaconda excepts to the findings and conclusions as to it in the following enumerated Paragraphs where it is referred to as "Anaconda" or by such collectives as "respondents," "all respondents," "as between respondents," "each respondent," "other respondents," "competitors" or "smaller competitors" on the ground that each and all of such findings are unsupported by the record as to

this respondent: the third unnumbered paragraph on Page 46; Page 47, (8-a2); Page 50, (9-a) and (9-b); Page 51, (9-d); Page 52, (9-e); Page 53, (9-f); Page 56, (10-g), (10-h) and (10-i); Page 57, (10-k) and (11-a).

7. Pages 46 and 47, Paragraph (8-a1), Anaconda excepts to this paragraph as being unwarranted by the evidence or by law.

Clayton Act, Section 2(a);

Corn Products Refining Co. v. Federal Trade Commission, 324 U.S. 726;

Federal Trade Commission v. A. E. Staley Co., 324 U.S. 746.

EXCEPTIONS TO SECTION IV OF THE RECOMMENDED
DECISION ENTITLED "RECOMMENDED FINDINGS AND
CONCLUSIONS"

8. Page 61, Paragraph 1-C, Anaconda excepts to having all references to it and respondent, International Smelting and Refining Company, combined under the name of "Anaconda" in this and subsequent paragraphs of the recommended findings and conclusions. [Record references and authorities in support of this exception are the same as those cited by respondent in Exception "1," Page 2 herein.]

9. Anaconda excepts to the findings and conclusions as to it in the following enumerated Paragraphs where it is referred to as "Anaconda" or by such collectives as "respondents," "all respondents," "as between respondents," "each respondent," "other respondents," "competitors" or "smaller competitors" on the ground that each and all of such findings are unsupported by the record as to this respondent:

Page 62, 1-F and 1-G; Page 64, 1-J; Page 67, 4-A;
Page 68, 4-C; Page 69, 4-D and 5-A1; Page 70, 5-A2
and 5-A3; Page 71, 5-B2; Page 73, 5-B5 and 5-B6;
Page 74, 5-C1, 5-C2, 5-C3 and 5-C4; Page 76, 5-C5
and 5-C6; Page 77, 5-C7, 5-C8 and 5-C11; Page 78,
5-D and 5-E; Page 79, 6-A; Page 80, 6-C and 6-D;
Page 81, 7-A3, 7-A4 and 7-A5; Page 82, 7-A6, 7-A7
and 7-A8; Page 83, 7-B2; Page 84, 7-C1 and 7-C2;
Page 85, 7-C4, 7-C5 and 7-D1; Page 86, 7-D2; Page
87, 7-D4 and 7-D5; Page 88, 8-A1 and 8-A2; Page
89, 9-A; Page 90, 9-B and 9-D; Page 91, 9-E and
9-F; Page 93, 10-F and 10-G; Page 94, 10-H, 10-I,
10-K and 10-L; and Page 95, 11-A.

10. Anaconda adopts as its own, and incorporates herein by reference, each and every exception and the authorities in support thereof to the Examiner's Re-

commended Decision which are taken by the other respondents herein to his recommended findings and conclusions as to conspiracy, collusion, agreement and cooperation between or among any or all of said respondents.

EXCEPTIONS TO SECTION V OF THE RECOMMENDED
DECISION ENTITLED "RECOMMENDED ORDER"

11. Page 96, Paragraph 1, Page 97, Paragraph 2, Page 98, Paragraphs 4 and 5, Anaconda excepts to its inclusion in the Recommended Order for the reason that there is no evidence in the record that it has been a party to any of the acts complained of in the amended complaint and there is uncontradicted evidence that Anaconda is not engaged in any of the activities covered by the order, and the Examiner has found that there is no reason to believe respondent will ever enter into or engage in the manufacture or sale of lead pigments. [Affidavit of E. O. Sowerwine, Vice President of Anaconda, in support of motion to dismiss amended complaint, pp. 2075-2077; 3543-3544; Trial Examiner's rulings on proposals for findings and conclusions submitted by counsel, March 31, 1948, pp. 1-2.]

EXCEPTIONS TO THE TRIAL EXAMINER'S FAILURE
TO INCLUDE PROPOSED FINDINGS AND CONCLU-
SIONS REQUESTED UNDER RULE XXI SUBMITTED
BY THIS RESPONDENT

12. Anaconda excepts to the Examiner's denial of the findings requested in Paragraphs "2" and "5" of its proposed Findings and Conclusions and Reasons therefor which were duly filed in this proceeding.

13. Anaconda excepts to the Examiner's denial of Paragraphs "1," "3" and "4" to "9," inclusive, of the Conclusions of Law requested by it and reasserts that these Conclusions were proper statements of the law on the points involved and that the denial thereof was contrary to both the evidence and the law.

* * * *

Anaconda adopts as its own, and incorporates herein by reference, each and every exception and the authorities in support thereof to the Examiner's Recommended Decision which are taken by the respondent, International Smelting and Refining Company.

Pursuant to the ruling of the Examiner herein, this respondent reserves the right to file further proposals and further exceptions at the time of submission of its brief on the merits and the argument of the case before the Commission.

This respondent respectfully requests argument on the above exceptions at the time of the argument before the Commission on the merits.

Respectfully submitted,

CHADBOURNE, WALLACE, PARKE & WHITESIDE

By

/s/ A. E. Gardiner

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