

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

APR 20 1947

In the Matter :
of : Docket No. 5253
NATIONAL LEAD COMPANY et al. :

PROPOSED FINDINGS, CONCLUSIONS AND
REASONS THEREFOR

COMES NOW the respondent, ANACONDA COPPER MINING COMPANY, by its attorneys, CHADBOURNE, WALLACE, PARKE & WHITESIDE, and submits the following proposed findings and conclusions, together with its reasons therefor:

1. The Anaconda Copper Mining Company (hereinafter referred to as "Anaconda") is a Montana corporation, with its principal office located at 25 Broadway, New York 4, New York. (Paragraph "THREE" of Amended Complaint and Paragraph "THREE" of Amended Answer thereto)

REASON: Alleged in complaint and admitted in answer.

2. Anaconda has never been engaged in the manufacture or sale of lead pigments. (Com. Ex. 836A-N; Affidavit of E. O. Sowerwine, Vice President of Anaconda, in support of motion to

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dismiss amended complaint, pp. 2075-2077; 3543-3544.)

REASON: There is no evidence that Anaconda was ever engaged in the manufacture or sale of lead pigments, and there is substantial evidence that it was not so engaged.

3. Anaconda has no present intention of entering into the business of 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)

REASON: The only evidence in the case as to the intention of Anaconda with regard to entering the manufacture or sale of lead pigments is an unqualified statement from a Vice President of that Company that it has no such intention.

4. There is no reason to believe that Anaconda or any of its subsidiaries 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.)

REASON: There is no evidence in the record of any intention on the part of Anaconda or any of its sub-

sidiaries to enter into the business of the manufacture or sale of lead pigments in the future, and there is an unqualified statement by the Vice President of Anaconda that it has no such intention.

5. Anaconda did not, nor did any of its officers, directors, employees, representatives or agents, combine, conspire or cooperate with any of the other respondents, or with any of their officers, directors, employees, representatives or agents, or any other person, for the purpose or with the effect of restraining, hindering, suppressing or eliminating competition in prices or terms of sale of lead pigments in commerce. (pp. 3508-3510, 3539-3541)

REASON: There is no evidence in the record of any such combination, conspiracy or cooperation, and there is uncontroverted testimony that such was not a fact.

CONCLUSIONS OF LAW

1. Anaconda has not manufactured and does not manufacture or sell any of the lead pigments that are the subject matter of this complaint, and its joinder as a respondent in this proceeding was, therefore, without justification and improper.

2. Anaconda has not combined or conspired or co-

operated with any of the respondents for the purpose or with the effect of restraining, hindering, suppressing or eliminating competition in prices or terms of sales of lead pigments in commerce.

3. Anaconda has not engaged in any unfair, oppressive or discriminatory acts, methods or practices in connection with the sale or offers to sell lead pigments in commerce.

4. Anaconda has not discriminated in prices between purchasers of lead pigments of like grade and quality sold for use, consumption or resale within the several states of the United States and the District of Columbia, or has not systematically sold such commodities to any purchasers at a price higher than the price at which commodities of like grade and quality are sold by it to other purchasers and users.

5. The fact that Anaconda may have owned a controlling interest or all of the stock of a corporation does not make it responsible for the actions of such subsidiary, nor would that fact make it a proper party to this action if such subsidiary had been engaged in the manufacture and sale of lead pigments. This is a well established legal principle for which there is ample authority as is evidenced by the following cases:

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).

6. None of the material allegations of the amended complaint as to the respondent, Anaconda, is supported by any evidence which has been produced at the hearings in this matter.

7. Anaconda has not violated and is not violating the provisions of Section 5 of the Federal Trade Commission Act.

8. Anaconda has not violated and is not violating the provisions of Section 2(a) of the Clayton Act, as amended, by the Robinson-Patman Act.

9. The Federal Trade Commission should enter an order herein, dismissing the amended complaint as to the respondent, Anaconda.

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