

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

Docket No. 5253.

JAN 16 1954

In the Matter of

NATIONAL LEAD COMPANY, a corporation,
EAGLE-PICHER LEAD COMPANY, a corporation,
EAGLE-PICHER SALES COMPANY, a corporation,
ANACONDA COPPER MINING COMPANY, a corporation,
INTERNATIONAL SMELTING & REFINING COMPANY, a corporation,
THE SHERWIN-WILLIAMS COMPANY, a corporation, and
THE GLIDDEN COMPANY, a corporation.

=====

OBJECTIONS BY THE GLIDDEN COMPANY
TO CERTAIN FINDINGS AND CONCLUSIONS PROPOSED BY
ASSISTANT GENERAL COUNSEL OF THE FEDERAL TRADE COMMISSION
TOGETHER WITH MEMORANDUM IN SUPPORT THERETO

=====

Roger Hinds,
165 Broadway,
New York 6, New York,

John A. Duncan of
K. B. & H. H. Johnson,
1649 Union Commerce Bldg.,
Cleveland 14, Ohio,

Attorneys for The Glidden Company.

=====

REPRODUCED AT THE NATIONAL ARCHIVES

N 4131

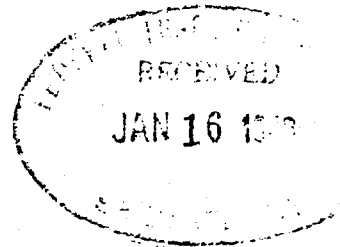
246

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

Docket No. 5253.

In the Matter of

NATIONAL LEAD COMPANY, a corporation,
EAGLE-PICHER LEAD COMPANY, a corporation,
EAGLE-PICHER SALES COMPANY, a corporation,
ANACONDA COPPER MINING COMPANY, a corporation,
INTERNATIONAL SMELTING & REFINING COMPANY a corporation,
THE SHERWIN-WILLIAMS COMPANY, a corporation, and
THE GLIDDEN COMPANY, a corporation.



OBJECTIONS BY THE GLIDDEN COMPANY
TO CERTAIN FINDINGS AND CONCLUSIONS PROPOSED BY
ASSISTANT GENERAL COUNSEL OF THE FEDERAL TRADE COMMISSION

Comes now, The Glidden Company (one of the respondents herein) by its attorneys, Roger Hinds and John A. Duncan, and objects to certain findings and conclusions proposed by counsel on behalf of the Federal Trade Commission, as follows:

A. PROPOSED FINDINGS

I

Page 9 (subparagraph 5 of part IB), line 6, substitute "30" for "60", in order to conform with the evidence, inasmuch as Glidden has only 30 retail stores and not 60 selling mixed paint, lead pigments and related products directly to consumers and the general public.

Line 12, insert "probably" immediately before "the largest domestic producer of lithopone," so as to conform with the evidence given by witness Paul Sprague (Tr. 2648).

II

Page 9 (subsection 6a. of IB), lines 2 and 3, delete "to serve the mutual interests of the entire lead industry.", inasmuch as the evidence given (Tr. 997) shows that Lead Industries Association was for those "who mine, smelt, refine and manufacture lead and lead products, including lead pigments."

Page 9 (subsection 6b. of IB), lines 14 and 15, substitute "a basis" for "the sole basis", for the reason that said statement is false and contrary to the testimony given in this proceeding.

III

Page 11, lines 2 and 3 from the bottom of the page (part II), delete "and of the freight rates used by his competitor", for the reason that Glidden used published railroad rates only.

Page 12, third line from the bottom of the page (part II), delete the word "ostensible" from the phrase "for the ostensible purpose", for the reason that the purpose was solely one of Code drafting.

IV

Page 26 (part III - Dry White Lead), delete the first full paragraph at the top of the page, for the reason that it is argumentative and not in accordance with the evidence.

Page 26, 27 and first half of page 28, delete that part of page 26 starting with the last paragraph, beginning "The record is clear * * *." Delete all of page 27 and that part of page 28 down to "IV. ADHERENCE TO THE CONSPIRACY", for the reason that such proposed findings are mere conclusions and not findings based upon the testimony given in this proceeding.

V

Page 29 (part IV), delete the last sentence in the second full paragraph relating to "conspiracy as found", for the reason that it is not supported by the evidence in this proceeding and is purely argumentative.

Page 31, paragraph 2, line 1, delete "adopted and" and also the word "agreed" in the same line, for the reason that Glidden did not adopt but merely followed, as borne out by the testimony introduced in this proceeding; and inasmuch as the testimony introduced on behalf of Glidden expressly negated any inference that Glidden had agreed to any pricing practices and terms and conditions of sale, the injection of the word "agreed" is not in accordance with the testimony presented in this proceeding.

Page 31, second full paragraph, lines 6, 7 and 8, delete "with the exception that for a period of time Glidden offered dealers purchasing white lead-in-oil outright a price 20¢ lower than the price to dealers on consignment and the prices of respondents National and Eagle-Picher.", for the reason that such an exception was not presented in evidence.

Page 32, delete the first full paragraph, for the reason that there is no evidence in the record to support the contention of the Government that the documents therein referred to showed adherence to the agreed terms and conditions of sale.

V

Page 41 (part V), first full paragraph should be deleted, for the reason that it is argumentative and presents only a conclusion unsupported by testimony.

VI

Page 41 (part VI), delete all references to "fixing and maintaining prices, terms and conditions of sale pursuant to combination, agreement and planned common course of action", inasmuch as the record fails to support such a finding.

B. PROPOSED CONCLUSIONS

VII

Page 42 (part VII), delete all of the Conclusions, for the reasons that they are insufficient and not reasonably deductible from the evidence presented in this proceeding.

M E M O R A N D U M

In support of the objections hereinabove enumerated, we submit on behalf of The Glidden Company that the specific findings proposed by counsel for the Federal Trade Commission are without support by way of record reference. The burden on the part of the Government is to completely, adequately and fairly state the ultimate facts. What counsel for the Federal Trade Commission proposes by way of the findings complained of, merely leads to the conclusion that if the Examiner adopts those particular findings, he will do so at the risk of not knowing whether they are supported by the evidence. We submit that most of the proposed findings specifically above referred to are merely arguments on the part of counsel for the Federal Trade Commission in support of what he believes the evidence should have been; not based upon what the evidence actually was. We submit that the proposed conclusions do not fall from the evidence

introduced, so far as The Glidden Company is concerned.

In view of the foregoing, we earnestly submit that the objections above raised should be granted.

Respectfully submitted,

Roger Hvide

John A. Duneau

Attorneys for Respondent
The Glidden Company.

M. B. & H. H. Johnson,
Of Counsel.