

Complaint

56 F.T.C.

## DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 30th day of January, 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

## IN THE MATTER OF

## DIAMOND CRYSTAL SALT CO.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7  
OF THE CLAYTON ACT

*Docket 7323. Complaint, Dec. 2, 1958—Decision, Feb. 4, 1960*

Consent order requiring one of the nation's largest salt producers—

To divest itself absolutely, within six months, of all interests in the "Seneca Lake" property it acquired in the acquisition of Jefferson Island Salt Company, Louisville, Ky., in January 1957, together with mining rights on an adjacent property:

To refrain from selling such properties to any one under its control or to any other salt producer having annual production of dry salt in excess of 350,000 short tons over a five-year period:

To desist for ten years from acquiring the assets or stock of any other salt producer or distributor;

After such ten-year period, to give prior notice to the Commission of intention to acquire any such producer or distributor or to merge with another corporation; and

For ten years to make salt produced at its Jefferson Island plant available to other producers, as in the order below specified.

## COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, has violated and is now violating the provisions of Section 7 of the Clayton Act (U.S.C. Title 15, Sec. 18) as amended and approved December 29, 1950, hereby issues its complaint, charging as follows:

PARAGRAPH 1. (a) Respondent, Diamond Crystal Salt Co., hereinafter sometimes referred to as Diamond Crystal, is a corporation

organized on March 17, 1953, and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 916 South Riverside Drive, St. Clair, Michigan.

(b) The business of Diamond Crystal was originally founded in 1886 as the Diamond Crystal Salt Company, Inc., at St. Clair, Michigan. In 1929, the outstanding capital stock of Diamond Crystal Salt Company, Inc., was acquired by General Foods Corporation which dissolved the original corporation in 1946. Following the dissolution, the business, along with the operations of the Colonial Salt Company, Akron, Ohio, which was acquired in 1945, were continued as the Diamond Crystal-Colonial Salt Division of the General Foods Corporation. On March 30, 1953, Diamond Crystal purchased the assets and business of the Diamond Crystal-Colonial Salt Division from General Foods Corporation.

(c) Respondent is engaged in the business of producing and distributing sodium chloride, hereinafter sometimes referred to as salt. The salt produced by respondent is offered for sale, sold, and distributed to purchasers thereof located in various States of the United States and in the District of Columbia. In the course and conduct of its business, respondent has engaged in commerce, as "commerce" is defined in the Clayton Act, as amended.

(d) Diamond Crystal owns two salt producing plants, one located at St. Clair, Michigan that operates eleven salt wells, and another at Akron, Ohio that operates six salt wells. Diamond Crystal's salt reserves at St. Clair, Michigan and Akron, Ohio are substantial, and it also owns two proven but capped salt wells at Hammondsport, New York. Prior to January, 1957, Diamond Crystal was an evaporated salt producer, producing sodium chloride by the solution mining method of injecting water into underground deposits, creating salt wells, and pumping out artificial brine which is evaporated to produce salt. Evaporated salt of many types and grades is produced by Diamond Crystal for table use as well as for commercial and industrial purposes.

(e) Prior to January 1957, Diamond Crystal sold and distributed salt under the brand names, "Diamond Crystal," "Colonial," "Weather-Pruf," and "Shaker," among others. Sales of salt were made in various States of the United States and also exported, but the principal marketing territory of Diamond Crystal was East of the Mississippi River. Diamond Crystal sold salt, among others, to the following classes of customers: food processors, meat packers, grocery distributors, feed dealers and mixers, industrial consumers, chemical manufacturers, various governmental agencies, and other salt producers.

(f) Diamond Crystal is a growing and profitable concern which, at the end of 1956, was one of the five largest dry salt producers in the United States. During the first three years of its operations, from on or about April 1, 1953, to March 31, 1956, Diamond Crystal's net sales increased from \$10,196,013 to \$11,585,417, an increase of about 14 percent, and its net income increased from \$363,920 to \$909,473, an increase of about 150 percent. During this same period, its total assets increased from \$7,375,416 to \$8,966,902, an increase of about 22 percent.

PAR. 2. (a) Prior to January 1957, Jefferson Island Salt Company, hereinafter sometimes referred to as Jefferson Island, was a corporation organized on July 29, 1919, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 136 St. Matthews Avenue, Louisville 7, Kentucky. The name of the corporation was changed in February, 1947, from Jefferson Island Salt Mining Company to Jefferson Island Salt Company.

(b) Jefferson Island was engaged in the business of producing and distributing sodium chloride. The salt produced by Jefferson Island was offered for sale, sold and distributed to purchasers thereof located in various States of the United States and in the District of Columbia. In the course and conduct of its business, Jefferson Island was engaged in commerce, as "commerce" is defined in the Clayton Act, as amended.

(c) Jefferson Island owned and operated a salt producing mine and processing plant, with railroad, truck and barge loading facilities located at New Iberia (Jefferson Island, P.O.), Louisiana. At this site, it controlled substantial salt reserves, owning or possessing mineral rights to salt deposits of an estimated depth of 25,000 feet, and of a purity ranging from 99.30 to 99.86 percent sodium chloride. Jefferson Island mined and extracted sodium chloride from this deposit by means of the room and pillar mining method. From a shaft that has been sunk into this deposit, large rooms have been cut out of pure salt. Salt is blasted loose, loaded into cars and hoisted to the surface for processing and refining. Jefferson Island was principally a rock salt producer, producing all types and grades of rock salt for table use as well as for commercial and industrial purposes.

(d) The Jefferson Island plant also had boilers, evaporators and other facilities and equipment for producing evaporated salt, and Jefferson Island produced a substantial quantity of evaporated salt for table use as well as for commercial and industrial purposes.

(e) Jefferson Island sold and distributed salt under the brand

names, "Jefferson Island," "Everready," "Old Rip," "Sof-T-Salt," "Champions Choice," "Big Steer," "Salt All" and "Self-Fed," among others. Sales of salt were made in various States of the United States East of the Rocky Mountains and for export, however, the principal marketing territory of Jefferson Island was East of the Mississippi River. Jefferson Island sold salt, among others, to the following classes of customers: food processors, meat packers, grocery distributors, feed dealers and mixers, industrial consumers, chemical manufacturers, various governmental agencies, and other salt producers.

(f) Prior to January, 1957, Jefferson Island was the largest independent dry salt producer in the South and was one of the six largest dry salt producers in the United States. Jefferson Island's net sales increased from approximately \$3,425,000 for the year ended December 31, 1950, to \$3,802,638 for the eleven months ended November 30, 1956, an increase of about 11 percent. Its net income increased from about \$309,000 for the year ended December 31, 1950 to \$508,670 for the eleven months ended November 30, 1956, an increase of about 64 percent. During this same period its total asset increased from approximately \$2,890,000 in 1950 to \$4,022,120 as of November 30, 1956, an increase of about 39 percent.

PAR. 3. (a) Sodium chloride, or salt, is one of the oldest, most commonly used and widely distributed mineral materials. In its natural state, it is generally found in two forms, as solid rock salt and as natural brine, and it is produced commercially from either form. Sodium chloride is the same chemically, wherever found, containing 39.34 percent sodium and 60.66 percent chloride. It is produced and sold commercially in a dry state for table use and for various other commercial and industrial purposes.

(b) For marketing purposes in the dry salt industry, there are two basic salt products, rock salt and evaporated salt. Rock salt and evaporated salt are functionally interchangeable for many uses. However, evaporated salt is used for some purposes for which rock salt may not be feasible, desirable, or advisable.

(c) The terms "sodium chloride" or "salt," as used in this complaint, refer to salt as produced and sold commercially in a dry state and include both evaporated salt and rock salt. As used herein, said terms do not include brine such as that which is produced and consumed by the chemical industry and is not marketed as dry salt.

(d) Sodium chloride, or salt, is produced by salt producers in the United States by means of three basic production methods, dry mining, solution mining and solar production.

(e) The production by dry mining involves the sinking of mine

shafts into underground salt beds or domes from which rock salt is excavated and transported to the surface. The excavated rock salt is then processed by being crushed, screened and refined into various types and grades of salt. The sodium chloride produced by this process is known as rock salt. Rock salt after being mined may be, and sometimes is, reduced to artificial brine from which evaporated salt is produced.

(f) The production by solution mining involves the extraction of salt from underground salt beds and domes by means of the injection of water into such cavities that melts the salt and forms wells of artificial brine. The brine is then pumped to the surface and evaporated. The salt resulting from the evaporation is then processed and refined into various types and grades of salt. The sodium chloride produced by this process is known as evaporated salt. This method of salt production is employed where the salt deposits are so far below the earth's surface as to make it impractical or impossible to remove the rock salt by sinking mine shafts down into such deposits.

(g) Solar production is another method of producing evaporated salt. This method involves the use of sea water, salt water from lakes or other natural brines which is evaporated from beds by exposure to the sun. The resulting salt in the beds is then processed and refined into various types and grades of salt.

(h) Sodium chloride produced by any of these three basic production methods may be processed or refined to meet particular user specifications or preferences with respect to the size and shape of the salt crystal, as well as the chemical and/or biological purity of the salt. In addition, various chemicals and/or minerals are sometimes added to either rock salt or evaporated salt to meet user specifications.

PAR. 4. (a) Prior to January 1957, Diamond Crystal and its predecessors and Jefferson Island were, and had been for many years, substantial dry salt producers. Diamond Crystal's two salt producing plants had a total annual productive capacity of approximately 495,000 short tons of evaporated salt. Approximately 255,000 short tons of this capacity, or 52 percent, consisted of Alberger evaporated salt, approximately 215,000 short tons, or 43 percent, vacuum pan evaporated salt, and approximately 25,000 short tons, or 5 percent, pressed block salt. The pressed block salt capacity could be increased approximately 25,000 short tons or an additional 5 percent, by decreasing the Alberger or vacuum pan capacities.

(b) Jefferson Island's plant had a total annual productive capacity of approximately 700,000 short tons of salt of which approxi-

mately 665,000 short tons, or 95 percent, consisted of rock salt and approximately 35,000 short tons, or 5 percent, consisted of vacuum pan evaporated salt. Of the approximately 665,000 short tons of rock salt capacity, approximately 30,000 short tons, or 4 percent, consisted of pressed block rock salt.

(c) In 1955, Diamond Crystal was the fourth largest dry salt producer in the United States, with shipments of 434,043 short tons of dry salt, or 4.7 percent of all dry salt sold or used by the dry salt producing industry. Diamond Crystal was the third largest producer of evaporated salt, as its shipments of 434,043 short tons represented 10.9 percent of all evaporated salt sold or used by the dry salt producing industry in the United States in 1955.

(d) In 1955, Jefferson Island was the sixth largest dry salt producer in the United States, with shipments of 388,771 short tons of dry salt, or 4.2 percent of the total dry salt sold or used by the dry salt producing industry. Jefferson Island was the third largest producer of rock salt sold or used in 1955 in the United States, as its shipments of 365,548 short tons of rock salt represented 6.9 percent of the total rock salt sold or used by the dry salt producing industry. Jefferson Island also shipped 23,223 short tons of evaporated salt, or .6 percent of the total evaporated salt sold or used by the dry salt producing industry in the United States in 1955.

PAR. 5. (a) The dry salt industry in the United States is highly concentrated in that the six largest dry salt producers, including Diamond Crystal and Jefferson Island, shipped in excess of three-fourths of the total dry salt sold or used in the United States in 1955. The dry salt producing industry in the United States, including Hawaii and Puerto Rico, in 1955 consisted of 48 dry salt producers, which sold or used 5,293,282 short tons of rock salt and 3,986,967 short tons of evaporated salt, or a total of 9,280,249 short tons of dry salt. In 1955 the six largest dry salt producers in the United States shipped 7,281,859 short tons, or 78.5 percent of the 9,280,249 short tons of the total dry salt sold or used by dry salt producers in the United States.

(b) Of the 5,293,282 short tons of rock salt sold or used by dry salt producers in the United States in 1955, the three largest rock salt producers, including Jefferson Island, shipped 3,661,299 short tons of rock salt, or 69.1 percent, of the total rock salt sold or used by dry salt producers.

(c) Of the 3,986,967 short tons of evaporated salt sold or used by dry salt producers in the United States, including Hawaii and Puerto Rico, in 1955 the five largest evaporated salt producers, including Diamond Crystal, shipped 2,984,859 short tons of evaporated

salt, or 74.9 percent of the total evaporated salt sold or used by dry salt producers.

(d) In 1940 there were 62 dry salt producers in the United States, including Hawaii and Puerto Rico, which sold or used 5,048,289 short tons of dry salt, as compared with the 48 dry salt producers which sold or used 9,280,249 short tons of dry salt in 1955. Between 1940 and 1955, the number of dry salt producers in the United States decreased by 14 or 22.6 percent, while the amount of dry salt sold or used by the dry salt producing industry increased 4,231,960 short tons, or 83.8 percent.

(e) The dry salt producing industry is difficult for a new producer to enter. Entry into the business is limited because of the heavy capital outlays required for resources, plant and equipment; the unavailability to new entrants of commercially usable salt resources; the large expenditures required to obtain business and overcome public acceptance of entrenched suppliers and brands; the inelasticity of demand for salt; the high degree of concentration of resources and production facilities in the industry; and the substantial idle capacity in the industry.

PAR. 6. On or about January 4, 1957, respondent entered into an agreement to purchase not less than 90 percent of the 40,122 issued and outstanding shares of common stock of Jefferson Island at \$125.00 per share or in excess of \$5,000,000 in the aggregate for all of the 40,122 issued and outstanding shares. This agreement was consummated on or about January 10, 1957, and respondent thereby acquired control and ownership of Jefferson Island. Respondent operated Jefferson Island as a subsidiary until on or about April 1, 1957, after which Jefferson Island was dissolved and its assets and business were merged into respondent.

PAR. 7. (a) Prior to January 1957, substantial competition, and substantial potential competition, existed between Diamond Crystal and Jefferson Island, and between them and others, in the sale and distribution of dry sodium chloride in interstate commerce in the area of the United States, East of the Rocky Mountains, and especially in the southeastern part of the United States in the nine state area of Louisiana, Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, Kentucky and Tennessee and in various parts thereof.

(b) In 1955, Jefferson Island ranked third in dry salt shipments in the aforesaid nine state area. Jefferson Island shipped 229,636 short tons of dry salt, or 21.4 percent, and Diamond Crystal shipped 38,252 short tons of dry salt, or 3.6 percent of the 1,072,347 short tons of dry salt sold or used in the said nine state area in 1955.

