(g) Their business is other than selling hearing aids to the public for a profit.

2. Misrepresenting in any manner:

(a) The nature or purpose of their business.

(b) The education or training of their sales personnel.

(c) The efficacy of their hearing aids.

3. Failing to deliver a copy of this order to cease and desist to all operating divisions of the corporate respondents and to all officers, managers and salesmen, both present and future, and any other person now engaged or who becomes engaged in the sale of hearing aids as respondents' agent, representative or employee; and failing to secure a signed statement from each of said persons acknowledging receipt of a copy thereof.

4. Failing to notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents 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 corporations which may affect compliance obligations arising out of the order.

It is further ordered, That the initial decision, as modified by the accompanying opinion, and as above modified, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

KENNECOTT COPPER CORPORATION

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

Docket 8765. Complaint, Aug. 5, 1968—Decision, May 5, 1971

Order requiring the nation's largest copper mining corporation with headquarters in New York City to divest itself within six months of the largest coal producer in the United States with headquarters in St. Louis, Mo., and not to make further acquisitions in the coal industry for the next ten years without prior Federal Trade Commission approval.

COMPLAINT

The Federal Trade Commission has reason to believe that Kennecott Copper Corporation, a corporation, has acquired the business and assets of Peabody Coal Company, a corporation, in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Sec. 18); and therefore, pursuant to Section 11 of said Act, issues this complaint stating its charges as follows:

I

DEFINITIONS

1. For the purpose of this complaint the following definitions shall apply:

(a) "Coal" includes bituminous and sub-bituminous coal.

(b) "The Mountain Region" consists of Colorado, Utah, Wyomining, New Mexico, Montana, Arizona, Idaho, and Nevada.

II

RESPONDENT

Kennecott Copper Corporation

2. Respondent Kennecott Copper Corporation, herein referred to as "Kennecott," is a corporation organized and existing under the laws of the State of New York, with its executive offices located at 161 East 42nd Street, New York, New York.

3. Kennecott is the largest copper producer in the United States having accounted for approximately 33% of the 1,372,000 tons of primary copper produced domestically during 1966. Kennecott is also a substantial producer of lead, zinc, molybdenum and silver and is the nation's second largest producer of gold.

4. Kennecott's Western Mining Divisions operate four copper, and related metals, mining properties located in New Mexico (Chino Mines Division), Nevada (Nevada Mines Division), Arizona (Ray Mines Division), and Utah (Utah Copper Division).

5. Kennecott also operates an electrolytic copper refining plant at Baltimore, Maryland (Kennecott Refining Corporation), as well as a copper and other metal-producing and fabricating facility in Cleveland, Ohio (Chase Brass & Copper Company).

6. Kennecott, as a producer, smelter, refiner, and fabricator of copper and other metal products, consumes substantial amounts of electrical energy. During 1965 its total dollar purchases of electricity amounted to approximately $3,000,000, some 30% of which was purchased for use by its Western Mining Divisions.

7. Kennecott consumes varying quantities of natural gas, fuel oil and coal for energy purposes. During 1965, 225,000 tons of coal were purchased by Kennecott, approximately 134,000 tons of which were

bought by its Nevada Mines Division. Kennecott uses such fuels principally to generate substantial quantities of electrical power, primarily for use in its metal mining and processing operations. On occasion Kennecott has also sold certain quantities of electrical power to utility companies and others.

8. During 1966 Kennecott and its wholly owned subsidiaries had sales of metals and metal products of $739,714,423 which, with miscellaneous revenues of $11,124,110, resulted in a net income of $125,-375,300. Total consolidated assets of Kennecott as of December 31, 1966 were $1,075,245,000. Kennecott's rate of return on stockholders' investment during 1966 was 13.6%. Among all industrial corporations, Kennecott ranked 55th in terms of assets and 111th in terms of sales in 1966.

9. Beginning on or about April 1963, Kennecott undertook an intensive investigation of the feasibility of entering the coal industry on a local, regional, national and international scale. During the course of this investigation, Kennecott, among other things, engaged outside coal consultants; studied the availability of coal lands and leases; attempted to negotiate options to purchase selected coal reserves; negotiated an option to purchase coal reserves; had drilling and engineering studies conducted to determine the extent of coal reserves on the optioned land; explored the possibility of supplying the coal then being used by its Nevada Mines Division; studied the possibility of converting its Utah Copper Division to use coal; contacted potential purchasers of coal; investigated the competitive structure of local and regional coal markets; studied the cost of transporting coal; made detailed analyses of the profit potentials of a coal operation; and concluded it could mine coal as efficiently as any of the major national coal companies.

10. In June 1965 Kennecott's board of directors approved purchase of the Knight-Ideal coal reserves in Carbon County, Utah, and allocated funds for the opening and operating of a coal mine with a projected annual capacity of 1,165,000 tons, which would have made it one of the largest coal operations in the West. The coal to be produced was intended to be used by Kennecott to supply a part of its Utah Copper Division fuel requirements, all of its Nevada Mines Division fuel requirements, and to make sales to outside customers. During 1964 the Knight-Ideal Coal Company had mined 185,000 tons of coal from these Carbon County reserves.

11. Subsequent to its purchase of the Knight-Ideal reserves, Kennecott incorporated a Utah subsidiary, Kennecott Coal Company, to mine, sell and ship coal and to perform all functions ancillary