

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,

Plaintiff,

v.

HERCULES INCORPORATED;
MITSUI PETROCHEMICAL INDUSTRIES,
LTD. and
MITSUI PETROCHEMICAL INDUSTRIES
(USA) INC.,

Defendants.

Civil Action No. 4667

Filed: May 31, 1973

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendants, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 4 of the Sherman Act (15 U.S.C. § 4), in order to prevent and restrain continuing violation by the defendants of Section 1 of the Sherman Act (15 U.S.C. § 1), and under Section 15 of the Clayton Act (15 U.S.C. § 25), in order to prevent and restrain continuing violation by the defendants of Section 7 of the Clayton Act (15 U.S.C. § 18).

2. Each of the defendants transacts business and is found in the District of Delaware.

II

THE DEFENDANTS

3. Hercules Incorporated (hereinafter referred to as "Hercules"), a corporation organized and existing under the laws of Delaware, with its principal office at Wilmington, Delaware, is made a defendant herein. In 1970 Hercules' net sales were approximately \$798,600,000 and its net assets were \$829,758,000.

4. Mitsui Petrochemical Industries, Ltd. (hereinafter referred to as "Mitsui"), a company organized and existing under the laws of Japan, with principal offices in Tokyo, Japan, is made a defendant herein. Mitsui's net sales were approximately \$80,000,000 in 1967 and \$125,000,000 in 1968.

5. Mitsui Petrochemical Industries (USA) Inc. (hereinafter referred to as "US-Mitsui"), a corporation organized and existing under the laws of New York, with its principal office in New York, New York, is made a defendant herein. US-Mitsui is a wholly-owned subsidiary of Mitsui.

III

TRADE AND COMMERCE

6. Polypropylene and high density polyethylene (hereinafter referred to as "HDPE") are in a group of plastics, known as polyolefins, which are derived from petrochemicals. Both polypropylene and HDPE are used in the manufacture of a wide variety of products. While there is some overlap in end use, both polypropylene and

HDPE have peculiar characteristics which suit each for distinct industrial applications. The domestic markets for both polypropylene and HDPE have been expanding steadily for the last 20 years.

7. Approximately 46 percent of domestic polypropylene is used in the manufacture of injection molded products such as caps and closures for bottles, appliances, automotive parts, and toys; approximately 29 percent is used in the manufacture of fiber and filament; and approximately 10 percent is used in the manufacture of film products. Approximately 42 percent of domestic HDPE is used in the manufacture of blow molded products such as bottles and tubes; approximately 23 percent is used in the manufacture of injection molded products; and approximately 4.5 percent is used in film and sheet.

8. In 1968, approximately 878,168,000 pounds of polypropylene, representing total sales of about \$190,845,000, were produced in the United States. In 1969, approximately 1,083,941,000 pounds of polypropylene were produced in the United States.

9. The domestic production and sale of polypropylene is highly concentrated. During the period of time of the violations alleged herein, approximately nine companies were producing polypropylene in the United States and Hercules has been a leader among these companies. For the year 1971, four manufacturers of polypropylene, with a total capacity for polypropylene production of approximately 1,410 million pounds, accounted for about

75 percent of the total United States polypropylene capacity of approximately 1,875 million pounds. Hercules with about 23 percent of the total industry capacity in 1971 was the leading polypropylene producer, in terms of capacity, in the United States.

10. Hercules, during the 1950's was also one of the leading HDPE producers in the United States, but ceased to be a major factor in the HDPE market when a more economical method for the manufacture of HDPE was developed by Phillips Petroleum Company (hereinafter referred to as "Phillips"). While Phillips generally made patent licenses available, Hercules did not take advantage of these licenses because, unlike the Ziegler HDPE process which Hercules was formerly using, the Phillips process was not compatible with Hercules' polypropylene equipment. For at least a year prior to the period of time of the violations alleged herein, Hercules was seeking an HDPE technology that would be competitive with the Phillips process.

11. Mitsui is one of the leading producers of both polypropylene and HDPE in Japan. Mitsui had developed an improvement upon the Ziegler process which permitted HDPE produced by that process to be competitive with HDPE produced by the Phillips process.

12. Mitsui decided to enter the manufacture and sale of polypropylene and HDPE in the United States market because the Japanese market for these products was oversaturated and was declining in profitability.

pursuant to this decision, Mitsui obtained permission from the Government of Japan to enter into joint ventures with United States companies to build plants in the United States and formed US-Mitsui to accomplish its entry into the American market. Throughout the period of time of the violations alleged herein, US-Mitsui has transacted and done the business of Mitsui within the United States, and Mitsui has caused US-Mitsui to do, among other things, the acts hereinafter alleged in paragraph 17 on Mitsui's behalf.

13. Mitsui entered into joint venture or licensing negotiations for the manufacture of HDPE and polypropylene with many United States companies. Included among these was a joint venture negotiation with Hercules for the manufacture of HDPE.

14. Polypropylene and HDPE are regularly sold and shipped in interstate commerce, and Hercules, in the conduct of its various business activities, including the manufacture and sale of polypropylene, is engaged in interstate commerce. Throughout the period of time of the violations alleged herein, Mitsui and US-Mitsui have been continuously shipping and selling various products, including HDPE, in the interstate and foreign commerce of the United States.

IV

FIRST VIOLATION

15. Beginning at least as early as September 1969, and continuing up to and including the date of the filing of this complaint, Hercules, Mitsui and US-Mitsui entered

into and engaged in a combination in unreasonable restraint of interstate commerce in the manufacture and sale of polypropylene in violation of Section 1 of the Sherman Act.

16. The aforesaid combination consists of an understanding, agreement and concert of action among the defendants, the terms of which are that the defendants would jointly manufacture and sell HDPE in the United States, that they would exchange patents and technology relating to the manufacture of polypropylene, and that at some future time they would jointly manufacture and sell polypropylene in the United States.

17. Pursuant to the aforesaid combination and conspiracy, and in furtherance thereof:

- (a) The defendants formed a partnership to manufacture and sell HDPE in the United States and Hercules conveyed to the partnership, H-M Plastics, assets consisting of, among other things, machinery, equipment, raw materials and licenses of patent rights, and technological know-how for the manufacture of HDPE, and Mitsui and US-Mitsui conveyed to H-M Plastics assets consisting of, among other things, licenses of patent rights and technological know-how for the manufacture of HDPE;
- (b) The defendants agreed to exchange patents and technology relating to the manufacture of polypropylene; and

(c) Mitsui terminated its polypropylene licensing and joint venture negotiations with other companies, including an agreement in principle which it had reached with one United States chemical company for the manufacture and sale of polypropylene through a joint venture, and its negotiations with another United States chemical company for a license of polypropylene technological know-how, and has since refrained from entering the United States polypropylene market.

18. The aforesaid combination is continuing and will continue unless the relief hereinafter prayed for is granted.

19. The violation alleged in paragraph 15 has had the following effects, among others:

- (a) actual and potential competition between Mitsui, as a joint-venturer with any other company, and Hercules in the sale of polypropylene in the United States has been eliminated;
- (b) potential competition between Mitsui licensees and Hercules in the manufacture and sale of polypropylene in the United States has been eliminated; and
- (c) the public has been deprived of the benefits of unrestricted competition in the manufacture and sale of polypropylene.

V

SECOND VIOLATION

20. The effect of the acquisition by the defendants, Hercules and Mitsui, from one another of the assets described

in paragraph 17(a) by means of their respective acquisition of interests in H-M Plastics may be substantially to lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act by, among other things, eliminating actual and potential competition between Mitsui, as a joint-venturer with another company, and Hercules in the manufacture and sale of polypropylene in the United States.

PRAYER

WHEREFORE, the plaintiff prays:

1. That the Court adjudge and decree that:

- (a) the aforesaid combination alleged in paragraphs 15 and 16 is in violation of Section 1 of the Sherman Act; and
- (b) the acquisition by the defendants of the assets described in paragraph 17(a) is in violation of Section 7 of the Clayton Act.


2. That the Court permanently enjoin the defendants and all persons, firms and corporations acting on their behalf from engaging in any contracts, combinations and conspiracies in restraint of interstate commerce in the manufacture and sale of polypropylene.

3. That the agreements between Hercules and Mitsui relating to the manufacture and sale of high density polyethylene and polypropylene, described in paragraphs 16 and 17, be terminated under terms providing for just

and fair compensation based upon the contributions made to H-M Plastics.

4. That the plaintiff have such other and further relief as the nature of the case may require, and the Court may deem proper in the premises.

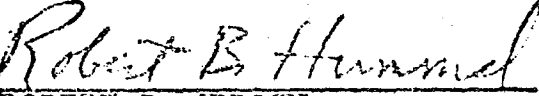
5. That the plaintiff recover the costs of this suit.


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