UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION (DAYTON)

UNITED STATES OF AMERICA, Plaintiff, v. OCCIDENTAL PETROLEUM CORPORATION Defendant.	Civil No. C 3-78-288 Filed: October 11, 1978 (15 U.S.C. §§ 18, 25) (Antitrust-Injunction Requested)

COMPLAINT

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 defendant named herein in three counts and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this proceeding is instituted under Section 15 of the Clayton Act (15 U.S.C. § 25) in order to prevent and restrain violation by the defendant of Section 7 of said Act, as amended (15 U.S.C. § 18).

2. Defendant Occidental Petroleum Corporation ("Occidental is found and transacts business in the Southern District of Ohio.

II

DEFENDANT

3. Occidental is made the defendant herein. Occidental is a corporation organized and existing under the laws of the State of California with its principal place of business

in Los Angeles, California. As used herein, "Occidental" means Occidental Petroleum Corporation and all corporations which it controls, directly or indirectly.

4. Occidental is the 27th largest industrial corporation in the United States as ranked by total sales and the 38th largest such corporation in terms of assets. In 1977, Occidental had consolidated revenues in excess of $6 billion, consolidated net income of $218 million and consolidated assets of $4.13 billion.

5. Occidental is engaged in a wide variety of business activities in the United States and many foreign countries. Occidental is the twelfth largest oil company in the United States. Through its subsidiary, Hooker Chemical Corporation, Occidental is the tenth largest producer of chemicals and allied products in the United States. Occidental's subsidiary, Island Creek Coal, Inc., is the fourth largest coal company in the United States.

III

ACQUISITION OFFER

6. On or about August 21, 1978, Occidental offered to purchase 100 percent of the outstanding stock of The Mead Corporation ("Mead") in exchange for certain Occidental stock. Mead rejected the offer. Occidental intends to proceed with a tender offer in an effort to gain control of Mead. In furtherance of that objective, Occidental has filed papers with the Securities and Exchange Commission, State of Ohio, Federal Trade Commission, and United States Department of Justice.

7. Mead is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business in Dayton, Ohio. As used herein, "Mead"

means The Mead Corporation and all corporations which it controls, directly or indirectly.

8. Mead is the 138th largest industrial corporation in the United States as ranked by total sales and the 146th largest such corporation ranked by assets. In 1977, Mead had total assets of $1.37 billion, sales of $1.8 billion and earnings in excess of $98 million.

9. Mead is a diversified corporation with its primary emphasis in forest products. Mead is the fifth largest pulp and paper company in the United States. Mead is also a producer of chemicals, coal, iron castings and molded rubber products, and a distributor of numerous supplies for the oil, gas and petrochemical industries. In addition, Mead is the largest supplier of computerized legal research systems in the United States.

10. Mead and Scott Paper Company have a 50/50 ownership of Brunswick Pulp & Paper Company ("Mead/Brunswick"). Mead/Brunswick is engaged in the production of chemicals, including sodium chlorate, chlorine, sodium hydroxide, and pulp and paperboard.

11. If Occidental were to acquire Mead, the combined corporate entity would have aggregate revenues of over $8 billion in 1978 and total assets approaching $6 billion. The resulting combination would be the 19th largest industrial corporation in the United States as ranked by sales and the 26th largest such corporation as ranked by total assets.

12. Occidental and Mead are each engaged in interstate commerce. Each purchases and sells a wide variety of products which are regularly shipped in interstate commerce from the production site to customers located in other states.

COUNT ONE

(Elimination of Competition in Sodium Chlorate)

13. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 12 inclusive as if set forth fully herein.

IV

NATURE OF TRADE AND COMMERCE

14. Sodium chlorate is a chemical compound produced by the electrolysis of sodium chloride. Over 75 percent of the sodium chlorate produced in the United States is used by the pulp and paper industry. Sodium chlorate is used for the on-site production of chlorine dioxide, a gas which possesses unique abilities to bleach pulp without significant degradation of the pulp. Chlorine dioxide cannot be safely transported and cannot be economically generated by any chemical other than sodium chlorate. The demand for sodium chlorate is expected to increase at a substantial rate in the future.

15. The production of sodium chlorate in the United States is highly concentrated. In 1977, four producers accounted for over 90 percent of industry capacity. Occidental is the largest producer with over 45 percent of industry capacity. Occidental produces sodium chlorate at plants located in Louisiana, Mississippi, and New York, and ships sodium chlorate from each of those facilities to customers in other states. Total sodium chlorate sales in 1977 in the United States were approximately $80 million.

16. The nature of sodium chlorate and the economics of its transportation are such that sales tend to be confined to a regional area. This is the situation in the Southeastern United States, which includes the States

of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia, and West Virginia. There are a number of pulp and paper mills located in the Southeastern United States, and the vast majority of the sodium chlorate produced in that region is sold to customers located in the Southeastern United States. Such customers purchase very little sodium chlorate produced outside the Southeastern United States.

17. Occidental is the largest producer of sodium chlorate in the Southeastern United States. In 1977 it controlled over 55 percent of sodium chlorate capacity in the Southeastern United States. In 1977, the top four producers controlled over 95 percent of total capacity in the Southeastern United States.

18. Mead produces sodium chlorate through a joint venture, Mead/Brunswick, at a facility in the Southeastern United States. The present capacity of that facility is approximately 7,000 tons per year. Mead/Brunswick's present capacity at Brunswick represents approximately 2.7 percent of United States sodium chlorate capacity and approximately 3.6 percent of the Southeastern United States sodium chlorate capacity. If Occidental acquires Mead, their joint capacity would represent over 48 percent of the 1977 United States sodium chlorate capacity and over 59 percent of the Southeastern United States sodium chlorate capacity.

19. Certain producers of sodium chlorate currently plan to complete construction of new sodium chlorate plants within the next year, expanding capacity by approximately 112,000 tons in the United States, of which approximately

72,000 tons represents new capacity in the Southeastern United States.

20. In addition, Mead/Brunswick has plans to increase its sodium chlorate capacity in 1979 to at least 10,000 tons per year. Mead/Brunswick also is considering entering into a joint venture to increase its sodium chlorate capacity to 40,000 tons per year.

21. Even with the additional projected capacity set forth in paragraphs 19-20 above, Occidental will continue to dominate and control the United States and Southeastern United States markets as the largest producer of sodium chlorate. Moreover, Occidental plans to increase its sodium chlorate capacity by at least 40,000 tons by 1981. As a result of the acquisition, Occidental will be in a position to substantially expand its sodium chlorate capacity immediately by expanding Mead/Brunswick. Such expansion would enable Occidental to preempt the demand for new capacity and thereby strengthen and maintain its already dominant position in the United States and Southeastern United States markets.

22. Mead and Mead/Brunswick are substantial purchasers of sodium chlorate. In 1977 they purchased more than 10,000 tons of sodium chlorate.

V

VIOLATION ALLEGED

23. The effect of the acquisition of Mead by Occidental may be substantially to lessen competition or to tend to create a monopoly in violation of Section 7 of the Clayton Act in the following ways, among others:

a. Actual competition and the potential for increased competition in the production and sale of sodium chlorate in the United States and in the Southeastern United States may be substantially lessened;

b. Concentration in the production and sale of sodium chlorate in the United States and the Southeastern United States may be substantially increased; and

c. Occidental's competitors in the production and sale of sodium chlorate in the United States and in the Southeastern United States may be foreclosed from selling to Mead.

COUNT TWO

(Elimination of Competition in Carbonless Copy Paper)

24. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 12 inclusive as if set forth fully herein.

VI

NATURE OF TRADE AND COMMERCE

25. Carbonless copy paper is a coated paper product which permits the transference of a mark or impression on an original sheet to one or more image sheets without the necessity of using traditional carbon interleaf paper. This is accomplished through the use of special original and image sheets of paper which are coated, respectively, with microcapsules filled with dye and with a special developer. When pressure is applied to the original sheet, the capsules break, the dye is released, and the developer forms an imprint of the original image. Carbonless copy paper is used in the manufacture of multiple-ply business forms. Carbonless copy paper possesses separate, distinct and unique

qualities which distinguish it from other products, and barriers to entry into the production of carbonless copy paper are substantial.

26. Production of carbonless copy paper in the United States totalled 300,000 tons in 1977 with a value of production exceeding $300 million. Mead is the country's second largest producer, accounting for approximately 24 percent of total production, and 27 percent of open market sales. Mead produces carbonless copy paper from a plant in Ohio and ships to customers in other states. The carbonless copy paper market is highly concentrated as the two top firms account for over 70 percent of total production and over 80 percent of open market sales.

27. The image sheet for all carbonless copy paper is produced by coating paper with a developer. Almost all developers are made from custom made alkylphenolic resins. At the present time there are only three firms in the United States producing carbonless copy paper resins.

28. Sale of carbonless copy paper resins totaled approximately $6 million in 1977. Occidental, through its subsidiary Hooker Chemical Company, is the nation's largest producer of carbonless copy paper resins. Occidental produces carbonless copy paper resin at a plant in New York and ships it to a customer in Wisconsin. Occidental's sales account for over 60 percent of the sales of such resins. Mead is the second largest purchaser of these resins, accounting for over 20 percent of purchases. The carbonless copy paper resin market is highly concentrated, with the top two producers accounting for over 80 percent of the total in 1977.

29. Production of carbonless copy paper resin requires close collaboration and long-term joint product

development between the resin manufacturer and the carbonless copy paper manufacturer. Occidental presently supplies Appleton Papers, the largest producer of carbonless copy paper, with its requirements for carbonless copy paper resin. If Occidental acquires Mead, over 80 percent of the carbonless copy paper market would be linked by ownership and customer-supplier relationships.

30. As a result of Occidental's technical knowledge of resin manufacture and carbonless copy paper production, it is one of the few companies with the capability of and interest in entering into the carbonless copy paper market.

VII

VIOLATION ALLEGED

31. The effect of the acquisition of Mead by Occidental may be substantially to lessen competition or to tend to create a monopoly, in violation of Section 7 of the Clayton Act, in the following ways, among others:

a. Actual and potential competition between Mead and Appleton in the production and sale of carbonless copy paper may be substantially lessened;

b. Actual and potential competition between Occidental, Appleton, and Mead in the research and development of carbonless copy paper resin may be substantially lessened; and

c. Potential competition between Occidental and Mead in the production and sale of carbonless copy paper will be eliminated.

COUNT THREE

(Elimination of Competition in Low and Medium Volatile Prime Coking Coal in the Eastern United States)

32. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 12 inclusive as if set forth fully herein.

VIII

NATURE OF TRADE AND COMMERCE

33. "Coking coal" is bituminous coal of such characteristics that when heated at high temperatures in the absence of air softens and then solidifies into a porous solid mass that is called coke. Coke is one of the basic materials used in blast furnaces for the conversion of iron ore into iron. The major portion of coking coal mined in the United States is used to produce coke which is in turn used in the production of iron and steel.

34. Coke suitable for use in blast furnaces must contain only small amounts of ash and sulfur as these impurities contaminate metals. Coking coal suitable for making blast furnace grade coke (hereinafter referred to as prime coking coal) must in general either contain less than one percent sulfur content and less than eight percent ash content or must be capable of being processed to yield coking coal of such characteristics or must possess other attributes such as high fluidity which economically offset disadvantages of higher levels of impurities.

35. Coking coal is classified by the amount of volatile matter it contains. Coking coal containing in excess of 31 percent volatile matter is considered high volatile, that containing 22 to 31 percent is considered medium volatile and that containing 14 to 22 percent is considered low volatile. In the United States, it is

general practice to mix prime coking coals of various volatility levels to produce a blend which falls within the medium volatility range. Low or medium volatility prime coking coal is economically indispensable in the production of this blend. Consequently, low and medium volatile prime coking coal constitutes a distinct product market.

36. The principal consumers of prime coking coal in the United States are iron and steel manufacturers located in the States of Pennsylvania, Indiana, Ohio, Alabama, Michigan, Maryland, and New York. Virtually all the prime coking coal consumed in those states is produced from reserves located in an area known as the Appalachian coal basin which consists of all or parts of the States of Maryland, Ohio, Pennsylvania, West Virginia, Alabama, Kentucky, Tennessee, and Virginia. These states, hereinafter referred to as the Eastern United States, collectively constitute a geographic market in medium and low volatile prime coking coal.

37. The amount of in-place coal reserves that meet the requirements for low and medium volatile prime coking coal is not precisely known. This is largely because the economics of coal preparation vary considerably according to the particular coal deposit involved. The total amount of such coal in place in the Eastern United States is estimated to be approximately 8 billion tons. Annual sales of Eastern United States low and medium volatile prime coking coal are approximately $3 billion.

38. Control of low and medium volatile prime coking coal reserves in the Eastern United States is concentrated.

The four largest holders account for approximately 50-60 percent of such reserves. Both Mead and Occidental control and mine reserves of low and medium volatile prime coking coal in the Eastern United States. Mead controls about 200 million tons of such reserves or approximately 2.5 percent. Occidental controls some 840 million tons of such reserves, about 10.4 percent. If Occidental acquires Mead, its holdings of reserves of low and medium volatile prime coking coal in the Eastern United States will increase to approximately 13 percent of the total such reserves.

IX

VIOLATIONS ALLEGED

39. The effect of the aforesaid acquisition of Mead by Occidental may be substantially to lessen competition or to tend to create a monopoly, in violation of Section 7 of the Clayton Act, in the following ways, among others:

a. Competition in the production and sale of low and medium volatile prime coking coal in the Eastern United States may be substantially lessened;

b. Competition between Mead and Occidental in the aforesaid market will be eliminated; and

c. Concentration in the aforesaid market will be significantly increased.

PRAYER

WHEREFORE, plaintiff prays:

1. That pending final adjudication of the merits of this complaint, a temporary restraining order and a preliminary injunction be issued preventing and restraining defendant Occidental and all persons acting on its behalf from:

a. Taking any action, directly or indirectly, in furtherance of the aforesaid tender offer, or

b. Taking any other action to acquire the stock or assets of Mead.

2. That the aforesaid proposed acquisition of Mead stock by Occidental be adjudged to be in violation of Section 7 of the Clayton Act.

3. That Occidental and all persons acting on its behalf be permanently enjoined from acquiring either directly or indirectly a major interest in Mead or any of its component companies.

4. That the plaintiff have such other and additional relief as may be just and proper.

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