UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Department of Justice Washington, D.C. 20530 (202) 724-7974 Plaintiff, v. E.I. DU PONT DE NEMOURS & CO., INC., 1007 Market Street Wilmington, Delaware 19898 (302) 774-1000 Defendant.	Civ. No. 81-1837 COMPLAINT Filed: 8/4/81

COMPLAINT

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

I

JURISDICTION

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

II

VENUE

2. The defendant transacts business and is found within the District of Columbia.

III

THE DEFENDANT

3. E.I. du Pont de Nemours & Co., Inc. (hereinafter "Du Pont") is named as the defendant herein. Du Pont is a

corporation organized and existing under the laws of the State of Delaware. It maintains its principal executive offices at Wilmington, Delaware.

4. Du Pont is the largest United States chemical company in terms of sales. It is primarily engaged in the production and sale of diversified lines of chemicals, fibers, and plastics. It is the largest United States producer of nylon, and the second largest United States producer of acrylonitrile and acrylic fiber. In 1980, the company had assets of about $17.4 billion and sales of about $13.6 billion.

5. Du Pont is a corporation engaged in commerce. Du Pont regularly purchases and sells in interstate commerce a substantial quantity of a wide variety of products. Significant amounts of Du Pont's products are manufactured in one state and shipped to customers located in other states.

IV

THE ACQUIRED FIRM

6. Conoco, Inc. (hereinafter "Conoco") is a corporation organized and existing under the laws of the State of Delaware. It maintains its principal executive offices at Stamford, Connecticut.

7. Conoco is primarily engaged in energy-related activities, including exploration for, and development and production of, crude oil and natural gas, refining of petroleum, production and processing of chemicals, and transportation and marketing of crude oil, natural gas, refined products, and chemicals. Conoco also has substantial coal reserves.

8. Conoco is a corporation engaged in commerce. Conoco regularly purchases and sells in interstate commerce a substantial quantity of a wide variety of products.

Significant amounts of Conoco's products are manufactured in one state and shipped to customers located in other states.

V

THE ACQUISITION OFFER

9. On or about July 15, 1981, Du Pont caused to be made a tender offer in cash and Du Pont stock for all common stock of Conoco. If the tender offer is successful, Du Pont will become the owner of Conoco's interest in a joint venture with Monsanto Company (hereinafter "Monsanto"). Du Pont has announced its intention to merge the two companies.

VI

THE CONOCO-MONSANTO JOINT VENTURE

10. Monsanto is a corporation organized and existing under the laws of the State of Delaware. It maintains its principal executive offices at St. Louis, Missouri.

11. Monsanto is the fourth largest United States chemical company in terms of sales. It is primarily engaged in the production and sale of diversified lines of chemicals, fibers, and plastics. It is the largest United States producer of acrylonitrile and acrylic fiber, and the second largest producer of nylon. In 1980, Monsanto had assets of about $5.8 billion and sales of about $6.5 billion.

12. In 1977, Monsanto and Conoco entered into an agreement (hereinafter "Joint Venture Agreement") to produce jointly certain basic petrochemicals, primarily propylene, ethylene, benzene, and butadiene, and the crude oil feedstocks from which these chemicals are made. Propylene, ethylene, and other basic petrochemicals are raw materials from which most synthetic fibers and plastics are made.

13. Prior to that time, Monsanto had at Chocolate Bayou, Texas, an existing facility, called a "cracking" facility or "cracker," to produce these basic petrochemicals. Conoco had abundant crude oil supplies and a refinery located at Lake Charles, Louisiana, which could be expanded to manufacture feedstocks for cracking facilities.

14. Under the terms of the Joint Venture Agreement, a new cracker was built at Chocolate Bayou and a feedstock unit was built at Lake Charles. Both parties contributed substantial capital, and Monsanto contributed the assets of its existing Chocolate Bayou cracker. Monsanto and Conoco share equally in the output of the cracking facilities, while Monsanto's share of the Lake Charles feedstock unit's output is 43.5 percent.

15. The new cracking and feedstock facilities became operational in late 1980. The output of the combined cracking facilities is about 8 billion pounds per year which has a market value of roughly $1 billion.

16. The joint venture is the major source of Monsanto's propylene and benzene needs. To date, Monsanto has consumed internally almost all of its share of the joint venture's output of propylene and benzene and has purchased from Conoco under supply contracts almost all of Conoco's share of propylene and benzene. Monsanto's use of propylene, both from the joint venture and third party sources, can be monitored in the joint venture's control room.

17. Monsanto has primary responsibility for day-to-day operations of the Chocolate Bayou cracking facilities; Conoco has that responsibility for the Lake Charles feedstock facility. The Joint Venture Agreement, however, gives each venture party equal control over primary joint venture

decisions such as which products the joint venture will produce, the rate and volume of production, and capital improvements. Each firm appoints three members of a six member management committee. Management committee deadlocks are broken under rules set out in the agreement. A production deadlock, for example, is negotiated first by the respective venture party managements and, if that fails, by the respective chief executive officers. Du Pont and Monsanto will therefore be in direct contact for the purpose of making competitively sensitive output decisions of the joint venture.

18. Conoco employees communicate with their Monsanto counterparts to obtain the information necessary to make management committee decisions. Management committee meetings are frequent and lengthy.

VII

TRADE AND COMMERCE

19. Monsanto's primary use for propylene is the production of acrylonitrile, from which it manufactures acrylic and nylon fibers. Monsanto is the largest domestic producer of acrylonitrile with about 43 percent of capacity; Du Pont is second with about 30 percent. There are only four domestic producers of acrylonitrile; their shares of production capacity are as follows:

Acrylonitrile (1980)

	Capacity (Million lbs.)	Capacity (%)
Monsanto	910	43
Du Pont	620	30
Sohio	300	14
American Cyanamid	265	13
Total top 4 firms	2095	100
TOTAL U.S. CAPACITY	2095	100

20. Acrylonitrile and propylene constitute a very large part of both Monsanto's and Du Pont's total manufacturing costs for acrylic fibers. Monsanto and Du Pont are, respectively, the largest and second largest domestic producers of acrylic fiber with a 76 percent combined share of domestic production and a 72.5 percent combined share of domestic capacity. There are only five United States suppliers, with the top four sharing about 99 percent of the domestic market in terms of production. The shares in terms of capacity are as follows:

Acrylic Fibers (1980)

	Capacity (Million lbs.)	Capacity (%)
Du Pont	317	36.5
Monsanto	315	36
American Cyanamid	125	14
Badishe	70	8
Total top 4 firms	827	94.5
TOTAL U.S. CAPACITY	867	100

21. Acrylonitrile and propylene constitute a very large part of Monsanto's total manufacturing costs for nylon. Monsanto, with about 21 percent of total domestic capacity, has the second largest amount of domestic nylon capacity, behind Du Pont, which has about 42 percent. Their combined share of domestic production is about 66 percent. There are 14 suppliers of nylon, but the top four have about 88 percent of the market in terms of both production and capacity.

Nylon (1980)

	Capacity (Million lbs.)	Capacity (%)
Du Pont	1098	42
Monsanto	564	21
Allied Chemical	450	17
Akzona Inc.	213	8
Total top 4 Firms	2325	88
TOTAL U.S CAPACITY	2637	100

VIII

VIOLATION ALLEGED

22. The effect of the proposed acquisition 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 lines of United States commerce, individually and collectively: the production and sale of acrylonitrile and nylon and acrylic fibers.

IX

EFFECTS

23. The proposed acquisition may substantially lessen competition or tend to create a monopoly in the aforementioned markets in the following ways:

a. Because the vast majority of Monsanto's propylene needs are supplied by the joint venture, and its remaining needs are monitored in the Chocolate Bayou control room, Du Pont could readily obtain knowledge of Monsanto's propylene consumption and costs. Virtually all of Monsanto's propylene is consumed in manufacturing acrylonitrile and nylon and acrylic fibers. Du Pont's knowledge of Monsanto's propylene consumption and costs

would give Du Pont substantial information about Monsanto's total production and production cost of acrylonitrile and nylon and acrylic fibers. Du Pont would also become aware of Monsanto production difficulties, such as plant shutdowns. The result could be a serious impediment to Monsanto's ability to compete with Du Pont in the sale and production of acrylonitrile and nylon and acrylic fibers.

b. As joint venture partners, Du Pont and Monsanto would jointly decide how much propylene, ethylene, and benzene the joint venture would produce, providing the opportunity for collusion as to output of the ultimate products: acrylonitrile and nylon and acrylic fibers. Moreover, the frequent contact Du Pont's management would have with Monsanto management in running the venture would provide many opportunities for exchanges of information relating to competition between the two companies.

c. Du Pont would have considerable influence, if not a veto, over Monsanto's efforts to make capital improvements to increase its acrylonitrile and nylon and acrylic fibers production by increasing the efficiency of existing propylene production facilities or by adding new propylene capacity.

PRAYER

WHEREFORE, plaintiff prays:

1. That the aforesaid proposed acquisition of Conoco by defendant, because of Conoco's interest in the Conoco-Monsanto joint venture, be adjudged to be in violation of Section 7 of the Clayton Act.

2. That defendant be ordered and directed, if it acquires Conoco, to purchase Monsanto's interest in the Conoco-Monsanto joint venture.

3. That plaintiff have such other and additional relief as the Court deems just and proper.

Dated: Aug. 4, 1981

RESPECTFULLY SUBMITTED,

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