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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, :
 :
 Plaintiff, :
 :
 v. : Civil No. 75-974-HP
 :
 PHILLIPS PETROLEUM COMPANY; : FEB 9 1977
 DOUGLAS OIL COMPANY OF CALIFORNIA; :
 POWERINE OIL COMPANY; : COMPETITIVE IMPACT
 FLETCHER OIL & REFINING COMPANY; : STATEMENT
 GOLDEN EAGLE REFINING COMPANY, :
 INC.; and :
 MACMILLAN RING-FREE OIL COMPANY, :
 INC., :
 Defendants. :

This Competitive Impact Statement is filed with the Court and published in the Federal Register pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. §16 (b) through (h). The United States and all the defendants in this action have filed with the Court a proposed Consent Judgment to settle this litigation.

I
NATURE AND PURPOSE OF THE PROCEEDINGS

This action was brought under the Sherman Act to enjoin and prevent continuation of an alleged conspiracy among the defendants to fix and stabilize the price of rebrand gasoline in the western area of the United States. The Complaint also seeks such other and different relief as may appear just and proper.

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II

DESCRIPTION OF THE COMPLAINT

The Complaint in this action, filed March 19, 1975, alleges that the defendants unlawfully combined and conspired to fix prices on rebrand gasoline in the western area of the United States during 1970 and 1971. Named as defendants are Phillips Petroleum Company; Douglas Oil Company of California; Powerine Oil Company; Fletcher Oil & Refining Company, Inc.; Golden Eagle Refining Company, Inc.; and Macmillan Ring-Free Oil Company, Inc. Rebrand gasoline is defined to mean "gasoline sold for resale in service stations under a trademark or brand name not owned or controlled by an oil refiner." The western area, as defined in the Complaint, covers the states of California, Oregon, Washington, Nevada, and Arizona. In 1970 the defendants sold more than eight hundred million gallons of rebrand gasoline in the western area with a wholesale value in excess of \$90 million. The defendants have previously pleaded no contest to criminal charges with respect to this alleged conspiracy.

III

DESCRIPTION OF THE PROPOSED CONSENT JUDGMENT

The proposed Consent Judgment defines rebrand gasoline and western area as they are defined in the Complaint. The Judgment is applicable to each of the defendants "and to each of its officers, agents, employees, subsidiaries, successors, and assigns." It does not apply to activities and agreements between a defendant, and its parents, subsidiaries, and affiliates. Because of the complex ownership of business entities controlled by the family members who own defendant Powerine, a special provision is included defining these businesses as "affiliates." In this regard, businesses or trusts owned or controlled by an individual -- a living human

1 being -- who owns more than ten percent of Powerine's stock
2 are also deemed to be affiliates for purposes of the Judgment
3 only. A letter from counsel for Powerine contains the
4 representations regarding these ownership interests. This
5 document is available for inspection and copying as noted
6 hereafter. The United States concluded that because of the
7 wide variety of forms of business organization and ownership
8 interests, it was not feasible to deal with this problem in a
9 provision with general applicability. We concluded that these
10 businesses were, for most purposes, operated as a single
11 commercial enterprise and, therefore, agreements and activities
12 among them should not be subject to the provisions of this
13 Judgment.

14 Section IV enjoins renewal of the type of conspiracy
15 alleged in the Complaint. Specifically, Section IV(A) enjoins
16 each defendant from entering into an agreement or understanding
17 with any other supplier of rebrand gasoline to fix prices of
18 rebrand gasoline sold to any third person in the western area,
19 to fix or stabilize price differentials of rebrand gasoline
20 sold to any third person in the western area, or to limit
21 sales of rebrand gasoline sold to any third person in the
22 western area. These injunctions run perpetually.

23 Section IV(B) of the proposed Consent Judgment enjoins
24 each of the defendants for a period of ten (10) years from
25 giving to or obtaining from any other supplier of rebrand
26 gasoline an opinion or information concerning the future price
27 of rebrand gasoline in the western area except in connection
28 with the negotiation of bona fide business transactions.

29 Section V requires that each defendant file, for a period
30 of five (5) years, affidavits of persons having responsibility
31 for pricing rebrand gasoline in the western area stating the
32 company's compliance with the injunctions of Section IV.

1 Section VI provides methods for determining each
2 defendant's compliance with the terms of the proposed Judgment.
3 Officers, employees and agents of each defendant may be
4 interviewed by duly authorized representatives of the
5 Department of Justice regarding the defendant's compliance
6 with the Judgment. Also, the Government is given access,
7 upon reasonable notice, to the records of the defendants in
8 order to examine them for possible violations of the Judgment.
9 Reports on matters contained in the Judgment may also be
10 required.

11 Section VII of the proposed Judgment requires defendants
12 to deliver copies of the Judgment to certain key employees, as
13 well as to officers and directors. Section VIII provides for
14 retention of jurisdiction by the Court.

15 It is the opinion of the Department of Justice that the
16 proposed Consent Judgment provides fully adequate provisions
17 to prevent continuance or recurrence of the violation of the
18 antitrust laws charged in the complaint. In the Department's
19 view, disposition of the lawsuit without further litigation is
20 appropriate since the proposed Judgment provides the relief
21 which the Government sought in its Complaint; the additional
22 expense of litigation would therefore not result in additional
23 public benefit.

24 IV

25 ALTERNATIVE RELIEF PROPOSALS ACTUALLY 26 CONSIDERED BY THE UNITED STATES

27 The prayer for relief in this action seeks a perpetual
28 injunction against each of the defendants enjoining them from
29 continuing or reviving any conspiracy, plan, program or under-
30 standing with "a similar purpose or effect." The purpose and
31 effect of the conspiracy alleged in the complaint was to fix
32 the price of rebrand gasoline in the western area, and the
proposed Judgment enjoins such activities. In addition,

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1 the prayer for relief seeks "such other and different"
2 relief as may appear "just and proper." The injunctions
3 contained in Sections IV (B) and (V) are responsive to this
4 prayer; but in addition the Government considered the following
5 types of additional relief:

6 The Department of Justice considered insisting upon relief
7 applicable to "automotive gasoline" rather than to rebrand
8 gasoline. Each of the defendants is a refiner which sells
9 gasoline, not only to rebranders but also through its own
10 service stations. Since the allegations of the Complaint,
11 however, relate only to rebrand gasoline, and since the
12 Government did not develop evidence of price fixing with
13 respect to gasoline other than rebrand gasoline, the Department
14 concluded that limiting the relief to apply only to rebrand
15 gasoline was appropriate in this case.

16 The Department of Justice also considered insisting
17 upon relief which applied to the sale of rebrand gasoline
18 anywhere in the United States. Such relief, however, was not
19 deemed necessary in this case. Five out of the six defendants--
20 Douglas, Powerine, Fletcher, Golden Eagle and Macmillan
21 Ring-Free--operate only in the western area. Since it sold
22 its separate Tidewater Division, Phillips operates primarily
23 outside the western area, and the facts in this case did not
24 indicate involvement by Phillips' personnel whose responsi-
25 bilities extend outside the western area. Similarly, there
26 was no evidence of participation by officials of Continental
27 Oil Company, the nationwide marketer which is the parent
28 corporation of Douglas. Under these circumstances, the
29 Government concluded that limiting the relief to the area
30 where the conspiracy occurred provides an adequate remedy
31 for the violation and a sufficiently strong safeguard against
32 its recurrence.

1 Section IV (B) of the Judgment enjoins the giving or
2 obtaining from a supplier of rebrand gasoline information or
3 an opinion regarding the future price of rebrand gasoline in
4 the western area. An exception is made for negotiations in
5 connection with certain bona fide business transactions among
6 the defendants. Consideration was given to expanding this
7 provision to enjoin exchange of information or opinions as
8 to current or past prices of rebrand gasoline. Consideration
9 was also given to enjoining giving or receiving information
10 or opinions with respect to the supply of rebrand gasoline.
11 In view of the numerous legitimate sale and exchange trans-
12 actions among the companies, however, it was felt that such
13 prohibitions would provide no genuine relief.

14 Section V of the Judgment requires that persons ". . . who
15 have direct personal responsibility for establishing the
16 prices charged by the defendant for rebrand gasoline in the
17 western area," file certifications. The Government considered
18 requiring such certifications with respect to every price
19 change and every quotation of a price for rebrand gasoline.
20 However, since these changes and quotations amount to many
21 thousands per year, it was apparent that no useful purpose
22 would be served by this repetitious paperwork. Consideration
23 was also given to who should make the certifications. It was
24 felt that the highest officials of the defendant companies
25 might not have any real knowledge of the facts, and salemen
26 who actually book the orders probably have very little
27 discretion or authority in pricing. Thus the formulation
28 provided for in the Judgment is deemed to put the responsibil-
29 ity on the person with knowledge and authority. The Government
30 withdrew its proposal that a defendant be barred from contin-
31 uing to employ any person found to have made a false affidavit
32 under this provision, since upon consideration the proposal

1 appeared unnecessarily severe.

2 V

3 REMEDIES AVAILABLE TO POTENTIAL
4 PRIVATE PLAINTIFFS

5 Any potential private plaintiffs who might have been
6 damaged by the alleged violations will retain the same right
7 to sue for monetary damages and any other legal and equitable
8 remedies which they would have had were the proposed consent
9 decree not entered. However, this Judgment may not be used as
10 prima facie evidence in private litigation pursuant to Section
11 5 (a) of the Clayton Act, as amended, 15 U.S.C. §16 (a).

12 VI

13 PROCEDURES AVAILABLE FOR MODIFICATION
14 OF CONSENT JUDGMENT

15 The proposed Final Judgment is subject to a Stipulation
16 by and between the United States and the defendants, which
17 provides that the United States may withdraw its consent to
18 the proposed Final Judgment until the Court has found that
19 entry of the proposed Judgment is in the public interest.
20 By its terms, the proposed Judgment provides for retention
21 of jurisdiction of this action in order, among other things,
22 to permit any of the parties thereto to apply to the Court
23 for such orders as may be necessary or appropriate for its
24 modification.

25 As provided by the Antitrust Procedures and Penalties Act,
26 any person wishing to comment on the proposed Judgment may do
27 so during a sixty (60) day period by submitting such comments
28 in writing to Dwight B. Moore, Chief, Los Angeles Field Office,
29 Antitrust Division, Department of Justice, 1444 United States
30 Court House, 312 North Spring Street, Los Angeles, California
31 90012. Such comments, together with responses thereto, will
32 be filed with the Court and published in the Federal Register.
The Department of Justice will evaluate such comments and

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1 determine whether there is any reason for withdrawal of its
2 consent to the proposed Final Judgment.

3 Section 2 (b) of the Antitrust Procedures and Penalties
4 Act, 15 U.S.C. §16 (b), requires the United States to file
5 with the Court and make available for inspection and copying
6 "materials and documents which considered determinative in
7 formulating such proposal" The United States is
8 therefore filing copies of a letter from Richard T. Williams
9 (counsel for Powerine Oil Company), dated July 14, 1976, which
10 letter described the numerous businesses owned or controlled
11 by the principal owners of Powerine, members of their families,
12 and former spouses, which are operated for most purposes as
13 a single business enterprise. The proposed consent Judgment
14 does not adopt the language suggested in attachment (B) to
15 this letter. The representations in the letter were, however,
16 determinative on the point that a special provision was
17 required to deal with problems raised by this multiplicity
18 of business organizations and ownership arrangements.

19 No other materials or documents are considered to have
20 been determinative in formulating the proposed Consent Judgment.

21 FEB 9 1977

22 DATED

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24 _____
25 RAYMOND P. HERNACKI
26 Assistant Chief
27 Los Angeles Field Office

28 _____
29 EDWIN D. HAUSMANN
30 Attorney
31 Department of Justice

32 _____
JOHN L. WILSON
Attorney
Department of Justice