

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Civ. No. 81-1837
	)	
v.	)	Filed: August 4, 1981
	)	
E.I. DU PONT DE NEMOURS & CO., INC.,	)	
	)	
Defendant.	)	

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COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)), the United States of America files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry against E.I. du Pont de Nemours & Co., Inc. in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

This civil action began on August 4, 1981 when the United States filed a complaint challenging the proposed acquisition of Conoco, Inc. ("Conoco") by E.I. du Pont de Nemours & Co., Inc. ("Du Pont") as a violation of Section 7 of the Clayton Act (15 U.S.C. § 18). The complaint alleges that the effect of the acquisition of Conoco by Du Pont may be substantially to lessen competition in the United States in the production and/or sale of acrylonitrile and nylon and acrylic fibers. The complaint requests that Du Pont be required to purchase Monsanto Company's ("Monsanto") interest in a Conoco-Monsanto joint venture in accordance with the terms of an agreement between Du Pont and Monsanto dated August 3, 1981.

The United States and Du Pont have stipulated that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act. Entry of the

proposed Judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify, or enforce the proposed Judgment, and to punish violations of the proposed Judgment.

## II. EVENTS GIVING RISE TO THE ALLEGED VIOLATION

In early July 1981 Du Pont made a tender offer in cash and Du Pont stock for all common shares of Conoco. If Du Pont acquires control of Conoco, Du Pont would thereby acquire Conoco's interest in a joint venture between Conoco and Monsanto. The joint venture, created in 1977, produces certain basic petrochemicals, primarily propylene, ethylene, benzene, and butadiene, and the crude oil feedstocks from which these chemicals are made. The joint venture owns two cracking facilities at Chocolate Bayou, Texas which produce the basic petrochemicals, and one feed stock manufacturing plant in Lake Charles, Louisiana. Conoco and Monsanto share evenly the basic petrochemicals produced at the cracking facilities and Monsanto receives 43.5 percent of the feedstocks from the Lake Charles plant.

Monsanto and Conoco have 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. Deadlocks are broken under the provisions set forth in the agreement. For example a production deadlock is negotiated first by the respective venture party managements and if that fails, by the respective chief executive officers.

The joint venture is the major source of Monsanto's requirements of propylene, ethylene, butadiene, and benzene. To date, Monsanto has consumed internally almost all of its

share of the joint venture's output itself 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 Chocolate Bayou facility's control room. Monsanto's primary use for propylene is in the production of acrylonitrile, from which it manufactures acrylic fiber and nylon. There are only four domestic producers of acrylonitrile. Monsanto is the largest with about 43 percent of total domestic capacity; Du Pont is second with about 30 percent.

Acrylonitrile and propylene constitute a very large part of both Monsanto's and Du Pont's total manufacturing costs for acrylic fibers. There are five United States suppliers of acrylic fibers, with the top four sharing about 99 percent of the domestic market in terms of production. 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.

Acrylonitrile and propylene constitute a very large part of Monsanto's total manufacturing costs for nylon. There are 14 suppliers of nylon, the top four having about 88 percent of the market in terms of both production and capacity. 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.

The joint venture agreement provides that, without written consent of the other party, neither party may sell its share of the joint venture until late 1985, the five year anniversary of

the date the facilities first become operational. After that time, either Conoco or Monsanto may sell its interest in a single cash transaction. The seller, however, must give the other party a chance to purchase the interest at terms equal to those offered to the ~~third~~ party buyer. The third party buyer must also be approved by the nonselling party and such approval may not be unreasonably withheld.

On August 3, 1981 Du Pont and Monsanto entered into an agreement which provides that within ten days of Du Pont acquiring control of Conoco, Du Pont will acquire Monsanto's share of the joint venture assets. On August 4, 1981 Du Pont entered into a Stipulated Order under which Du Pont agrees, until it acquires Monsanto's share of the joint venture, to hold Conoco's assets separate, not to attempt to influence decisions of the joint venture, and not to obtain the type of information from the joint venture that would give Du Pont knowledge of Monsanto's total production and production costs of the relevant products.

### III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT AND ITS ANTICIPATED EFFECTS ON COMPETITION

The United States brought this action because the effect of Du Pont's acquisition of Conoco's interest in the Conoco-Monsanto joint venture may be substantially to lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act in the production and sale of acrylonitrile and nylon and acrylic fibers.

First, replacing Conoco with Du Pont as Monsanto's partner in the joint venture might impede competition between Du Pont and Monsanto in these markets. The vast majority of Monsanto's propylene requirements are supplied by the joint venture, and the remaining propylene that it uses is monitored by the

Chocolate Bayou control room. Therefore, through participation in the joint venture, Du Pont readily could obtain knowledge of Monsanto's propylene consumption and costs. Since virtually all of Monsanto's propylene is consumed in manufacturing acrylonitrile and then nylon and acrylic fibers, Du Pont's knowledge of Monsanto's propylene consumption and costs would give Du Pont important information as to Monsanto's total production and production costs of acrylonitrile and nylon and acrylic fibers. Du Pont would gain significant information about Monsanto's business planning and strategies in these markets as well as of the details of Monsanto's operations, such as production difficulties and plant shutdowns. Moreover, Du Pont would have considerable influence over Monsanto's efforts to make capital improvements to increase its acrylonitrile and nylon and acrylic fiber production by increasing the efficiency of existing propylene production facilities or adding new propylene capacity.

Next, as joint venture partners, Du Pont and Monsanto would jointly decide how much propylene, ethylene, benzene and butadiene the joint venture would produce. This would provide the opportunity for collusion as to output of the ultimate products: acrylonitrile and nylon and acrylic fibers. Moreover, in running the joint venture Du Pont and Conoco management would have frequent contact with each other which would provide many opportunities for exchanges of competitively sensitive information relating to competition between the two companies.

Du Pont's purchase of Monsanto's interest in the joint venture under the terms and conditions set forth in their August 3, 1981 agreement would eliminate the potential for these anticompetitive effects. The proposed Final Judgment is

a protective measure intended to assure that the transfer of right, title, and interests contemplated in the voluntary agreement between Du Pont and Monsanto is carried out. The proposed Judgment provides that in the event that the purchase has not occurred by the time that the Final Judgment can be entered, Du Pont shall take steps necessary to obtain performance of Monsanto's obligations under the agreement, and shall purchase Monsanto's interest at the same price and under the terms and conditions set forth in the Monsanto-Du Pont agreement. In addition, the proposed Judgment permits the government to seek any other appropriate relief necessary to effectuate the purpose of the decree: prohibiting Du Pont from participating with Monsanto in the joint venture. Finally, the proposed Judgment provides for the same type of protection against the flow of competitively significant information from the Joint Venture to Du Pont that are contained in the Stipulated Order.

#### IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of Clayton Act (15 U.S.C. §15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage actions. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. §16(a)), the proposed Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against the defendant.

V. PROCEDURES AVAILABLE FOR MODIFICATION  
OF THE PROPOSED FINAL JUDGMENT

The United States and defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Antitrust Procedures and Penalties Act, provided that the United States has not withdrawn its consent. The Act conditions entry upon the Court's determination that the proposed Judgment is in the public interest.

The Act provides a period of at least sixty (60) days preceding the effective date of the proposed Judgment within which any person may submit to the government written comments regarding the proposed Judgment. Any person who wants to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the court and published in the Federal Register.

Written comments should be submitted to:

Roger B. Andewelt, Assistant Chief,  
Intellectual Property Section  
Antitrust Division (SAFE-704)  
U.S. Department of Justice  
Washington, D.C. 20530

VI. ALTERNATIVES TO THE PROPOSED  
FINAL JUDGMENT

The only arrangements considered were either Du Pont or Monsanto selling its interest in the joint venture. Under the terms of the joint venture agreement Monsanto could prevent Conoco or Du Pont from selling Conoco's interest for a period of approximately four more years. Therefore, Du Pont's

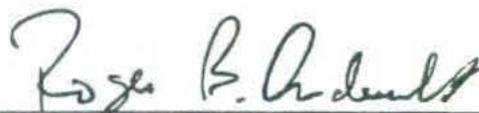
purchase of Monsanto's interest is the preferable solution to the potential competitive problems involved.

VII. DETERMINATIVE DOCUMENTS

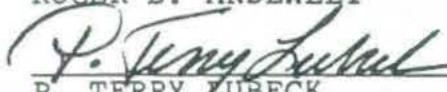
The only document determinative in the formulation of the proposed Final Judgment was the agreement between Du Pont and Monsanto dated August 3, 1981, providing for the purchase by Du Pont of Monsanto's interest in the Conoco-Monsanto joint venture. A copy of that agreement is being filed by the United States pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b) and is attached to the proposed Final Judgment.

Dated: AUG - 4 1981

RESPECTIVELY SUBMITTED,



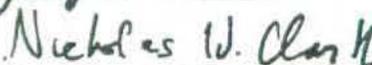
ROGER B. ANDEWELT



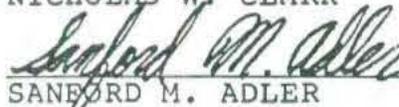
P. TERRY LUBECK



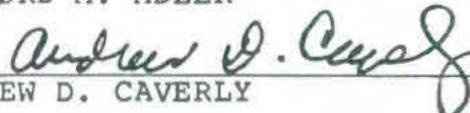
JOSEPH T. MELILLO



NICHOLAS W. CLARK



SANFORD M. ADLER



ANDREW D. CAVERLY

Attorneys  
U.S. Department of Justice  
Antitrust Division (SAFE-704)  
Washington, DC 20530  
202/724-7974

AGREEMENT

Monsanto agrees to sell, convey and transfer to either Conoco or Du Pont at the latter's option ten (10) days after Du Pont shall acquire control of Conoco all of Monsanto's right, title and interest, exclusive of working capital, in the Facilities as defined in the Monsanto-Conoco Agreement dated October 1, 1977, ("Chocolate Bayou Agreement") and New Process Facilities as defined in the Conoco-Monsanto Feedstock Agreement dated October 1, 1977, for the following consideration:

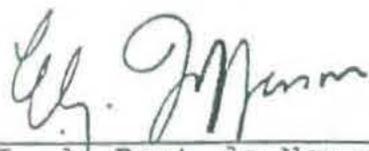
- (i) \$275,000,000 to be paid ten (10) days after Du Pont shall acquire control of Conoco; plus
- (ii) such additional amount, if any, to be mutually agreed upon by Monsanto and Du Pont within six (6) months following the acquisition of control of Conoco by Du Pont as representing, when added to the amount set out in (i), the fair value of the right, title and interest in the Facilities transferred by Monsanto and, failing such agreement, such amount will be determined by an appraiser chosen by Monsanto and Du Pont, or in the event of their failure to appoint an appraiser,

by an appraiser selected by the American Arbitration Association, who in determining fair value shall take into consideration such criteria as the appraiser deems to be appropriate for determining the fair value of the Facilities to be transferred by Monsanto. Such additional amount shall be payable to Monsanto ten (10) days after it has been finally determined as provided in this Section (ii).

This Letter Agreement and the transaction contemplated hereby shall be promptly ratified by the Boards of Directors of both parties. The Management of each party shall use reasonable efforts to obtain such ratification promptly.

Upon execution of this Letter Agreement both parties will proceed diligently with the negotiation and execution of definitive written agreements. It is, however, the intent of the parties that this Letter Agreement shall be binding on all parties.

  
Monsanto Company

  
E.I. du Pont de Nemours  
and Company

Date: August 3, 1981