

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Cities Service Co., Cities Service Oil Co., Jenney Manufacturing Co., and Chelsea Terminals, Inc., U.S. District Court, D. Massachusetts, 1975-2 Trade Cases ¶60,656, (Dec. 3, 1975)

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United States v. Cities Service Co., Cities Service Oil Co., Jenney Manufacturing Co., and Chelsea Terminals, Inc.

1975-2 Trade Cases ¶60,656. U.S. District Court, D. Massachusetts. Civil Action No. 68-213-S. Entered December 3, 1975. (Competitive impact statement and other matters filed with settlement: 40 *Federal Register* 45204). Case No. 1996, Antitrust Division, Department of Justice.

Clayton Act

Acquisitions—Retail Gasoline Outlets—Divestiture—Acquisitions Ban—Consent Decree.—An oil company was required to divest service station outlets accounting for a specified volume of gasoline sales, and purchasers of the stations were to be offered supply contracts, under the terms of a consent decree. A five-year ban on acquiring automotive gasoline retail marketing outlets in specified locations and for specified dollar amounts was imposed. Additionally, the obligations of the acquired service station chain and the rights of the oil company with regard to the chain's fee-owned retail outlets were spelled out.

For plaintiff: Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, Charles F. B. McAleer, John C. Fricano, Rodney O. Thorson, Jill Devitt Radek, Robert J. Ludwig, and Matthew E. Jaffe, Attys., Dept. of Justice.

For defendants: Harold Hestnes, of Hale and Dorr, and Darrel A. Kelsey for Cities Service Co., Cities Service Oil Co., and Chelsea Terminals, Inc.; Robert E. Sullivan, of Herrick, Smith, Donald, Farley & Ketchum, for Jenney Manufacturing Co.

Final Judgment

SKINNER, D. J.: Plaintiff, United States of America, having filed its Complaint herein on March 8, 1968 and the Plaintiff and the Defendants by their respective attorneys, having consented to the entry of this Final Judgment without admission by any party with respect to any issue and without this Final Judgment constituting evidence or an admission by any party hereto with respect to any such issue;

Now, Therefore, before any testimony has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I.

[*Jurisdiction*]

This Court has jurisdiction over the subject matter of this action and of the parties hereto. The Complaint states claims upon which relief may be granted against the defendants under Section 7 of the Act of Congress of October 15, 1914, as amended (15 U. S. C. 18), commonly known as the Clayton Act. Entry of this Judgment is in the public interest.

II.

[*Definitions*]

As used in this Final Judgment:

- (A) Defendant "Cities" shall mean the Cities Service Company, the Cities Service Oil Company, and Chelsea Terminals, Inc.;
- (B) Defendant "Jenney" shall mean Jenney Manufacturing Company;
- (C) The "two-state area" shall mean the Commonwealth of Massachusetts and the State of New Hampshire;
- (D) "New England" shall mean the Commonwealth of Massachusetts and the States of New Hampshire, Maine, Vermont, Connecticut and Rhode Island;
- (E) "Retail volume" shall mean motor gasoline which is sold or distributed for eventual sale to the public through retail outlets;
- (F) "Retail outlets" shall mean those service stations through which the defendants market their brand name petroleum products;
- (G) "Person" shall mean an individual, partnership, corporation, firm or any other business or legal entity.

III.

[*Applicability*]

The provisions of this Final Judgment shall apply to any defendant and to its officers, directors, agents, employees, subsidiaries, successors and assigns, and to those persons in active concert or participation with such defendants who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

Chelsea Terminals, Inc., is hereby dismissed as a named defendant in this Final Judgment, but shall be bound by the terms thereof as long as it remains a subsidiary of Cities.

V.

[*Divestiture*]

- (A) Defendant Cities is ordered and directed within three (3) years from the effective date of this Final Judgment, to divest itself of retail outlets accounting for an annual retail volume in the two-state area of not less than fifteen million two hundred seventy-five thousand (15,275,000) gallons in the calendar year immediately preceding the year of entry of this Final Judgment;
- (B) Defendant Cities is ordered and directed to offer to each person initially acquiring any retail outlets to be divested pursuant to Paragraph V(A) or Paragraph VI of this Final Judgment contracts to supply such person for such periods as may be requested by such person not exceeding four (4) years, upon reasonable terms and conditions, with annual quantities of motor gasoline equal to that sold at the retail outlets in the calendar year immediately preceding the year of entry of this Final Judgment, and each such person shall be free to allocate and sell such supply volumes among and through retail outlets as he sees fit. Provided, however, that should Cities' gasoline production increase during such period, additional volumes equal to the percentage of such increase of gasoline production shall be offered to such purchasers. Nothing in this Paragraph shall require defendant Cities to undertake any act inconsistent with any federal government regulations relating to the allocation and distribution of petroleum products;
- (C) The divestiture required by this Section V shall be absolute and unconditional upon terms and conditions and to a person or persons first approved by the plaintiff or, failing such approval by the plaintiff, by the Court;
- (D) Not less than sixty (60) days prior to the closing date of any divestiture made pursuant to this Section V, defendant Cities shall furnish plaintiff in writing the complete details of the proposed transaction. Plaintiff may request supplementary information concerning the proposed divestiture within twenty-five (25) days after receipt of the details of a proposed transaction or within twenty-five (25) days after receipt of previously submitted information, which supplementary information shall be promptly furnished in writing;

(E) If plaintiff objects to any divestiture proposed pursuant to this Section V, it shall notify defendant Cities of such objection in writing within thirty (30) days of receipt of the supplementary information submitted pursuant to plaintiff's last request for such information, or within thirty (30) days after the receipt by plaintiff of a statement from defendant Cities that it does not have some or all of the requested supplementary information. If plaintiff makes no request for supplementary information, notice of objection to any proposed divestiture must be given in writing to the defendant Cities within thirty (30) days of plaintiff's receipt of the originally submitted details of the proposed divestiture. If plaintiff objects to the proposed divestiture, then such divestiture shall not be consummated unless approved by the Court or unless plaintiff notifies defendant Cities in writing that its objection has been withdrawn. If plaintiff does not object within thirty (30) days of its receipt of the originally submitted details of a proposed divestiture, plaintiff may be deemed to have approved the divestiture;

(F) Any of the retail outlets divested pursuant to this Final Judgment repossessed or reacquired by defendant Cities shall be divested within one (1) year from the date of such repossession, or with the prior approval of the plaintiff, retail outlets with an equivalent retail volume shall be substituted therefor to the extent necessary to meet the divestiture requirements of this Final Judgment;

(G) The time period set forth in Section V(A) shall be tolled during the pendency of any proceedings in this Court under this Final Judgment relating to approval of a proposed divestiture.

VI.

[*Trustee*]

If defendant Cities is unable to complete the divestiture required by this Final Judgment within the time period set forth in Section V hereof, the Court shall appoint a trustee who shall have authority to select and divest retail outlets in the two-state area accounting for such portion of the retail volume provided in Section V(A) which Cities has been unable to divest. All sales or other disposition of retail outlets by such trustee shall be subject to prior approval of the Court and the Court shall provide the parties with opportunity for hearing on the terms of any sale or disposition of retail outlets prior to granting approval for same.

VII.

[*Fee-Owned Stations*]

Under this Final Judgment the obligations of Jenney, and the rights of Cities with respect to Jenney fee-owned retail outlets, as affected by this Judgment, shall be limited as follows:

(A) When requested by Cities in order for Cities to complete the divestiture or divestitures under this Final Judgment or upon request of the Trustee pursuant to the Trustee's powers under Section VI, Jenney shall sell to Cities for resale by Cities to a third party or parties or to Cities to replace outlets sold by Cities to a third party or parties up to a total of sixty (60) fee-owned Jenney retail outlets upon terms determined under the Lease Agreement, dated July 1, 1963, between Jenney and Cities, as subsequently amended on September 23, 1975 (the "Lease"); provided, however, that in no event shall Jenney be required to sell (1) retail outlets the annual basic rentals allocable to which under the terms of the Lease aggregate to more than 25% of the total annual basic rental currently being received by Jenney under the Lease; or (2) replacement outlets having an annual gasoline sales volume, in the aggregate, in excess of such volume of the outlets replaced. Jenney shall have the right to be consulted concerning the selection of such sixty (60) fee-owned retail outlets and to be heard by the Court if it objects to the inclusion of any retail outlet or retail outlets and further shall have the right (exercisable within thirty days after written notice from Cities or the Trustee, as the case may be, of the selection thereof) to exclude from such selections a total of up to 10% of the retail outlets in which it held a fee interest on the date of entry of this Final Judgment.

(B) Cities may assign or sublet to others the lease of fee-owned retail outlets under the Lease and may assign its rights to extend the term of the Lease as provided in Paragraph 4 of the Lease, and may sublet during the present term and any extension thereof Jenney fee-owned outlets, all as permitted by and in accordance with the provisions of Paragraph 14-B of the Lease.

VIII.

[*Compliance Report*]

Defendant Cities is ordered and directed to file with the plaintiff every three (3) months after the date of entry of this Final Judgment a written report setting forth the steps taken by it to accomplish the divestiture required by such Final Judgment.

IX.

[*Acquisitions Ban*]

For a period of five (5) years from the date of entry of this Final Judgment Cities shall not acquire from any person any interest in (a) any automotive gasoline retail marketing outlets in the two-state area, or (b) any automotive gasoline retail marketing outlets elsewhere in New England without prior written approval by the plaintiff or, failing such approval, by the Court; provided, however, that the prohibitions in (a) and (b) above shall not apply to acquisitions where (i) the consideration does not exceed one million dollars (\$1,000,000.00), (ii) the acquisition is of Cities branded distributors, or (iii) the acquisition is the result of enforcement of any bona fide lien, mortgage, deed of trust or any other security interest held by defendant Cities to secure any loan of ten million dollars (\$10,000,000.00) or less made to a distributor which, at the time of the loan, was a Cities branded distributor.

X.

[*Prior Stipulation*]

The Stipulation and Order entered into by the parties on April 25, 1968 and ordered by this Court on April 25, 1968 is hereby revoked and its provisions are of no further effect.

XI.

[*Compliance Inspection*]

A. For the purpose of determining or securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and upon reasonable notice to any defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(a) Access, during office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession of or under the control of said defendant relating to any of the matters contained in this Final Judgment; and

(b) Subject to the reasonable convenience of any defendant to interview the officers and employees of said defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made to its principal office, each defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be requested.

C. No information obtained by the means provided in this Section XI shall be divulged to any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

XII.

[*Retention of Jurisdiction*]

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions thereof, for the enforcement of compliance therewith and for punishment of violations thereof.