

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The Standard Oil Co., et al., U.S. District Court, N.D. Ohio, 1970 Trade Cases ¶72,988, (Jan. 1, 1970)

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United States v. The Standard Oil Co., et al.

1970 Trade Cases ¶72,988. U.S. District Court, N.D. Ohio, Eastern Division. No. C 69-954, Entered January 1, 1970. Case No. 2076 in the Antitrust Division of the Department of Justice.

Clayton Act

Acquisitions—Gasoline Marketers—Elimination of Probable Anticompetitive Effect of Merger—Sale of Retail Outlets after Merger—Consent Decree.—In settlement of a merger between integrated oil companies, the acquiring firm was required by the terms of a consent decree to divest itself of retail outlets in Ohio representing an annual sales volume of 400 million gallons in three specified stages over a period of four years. Both firms are required to dispose of retail outlets that compete with one another in the western part of Pennsylvania. The decree prohibits the companies from acquiring in the future more than one percent of the stock of any company that retails gasoline in Ohio or western Pennsylvania except upon 60 days' prior written notice to the Justice Department.

For the plaintiff: John N. Mitchell, Atty. Gen., Walker B. Comegys, Deputy Asst. Atty. Gen., Baddia J. Rashid, Carl L. Steinhouse, W. D. Kilgore, Jr., David R. Melincoff, Harry N. Burgess and John A. Weedon, Attys., Dept. of Justice; Richard W. McLaren, Asst. Atty. Gen.; Allen A. Dobey, George H. Hempstead, III and Gregory R. McClintock; Robert B. Krupansky, U. S. Atty.

For the defendants: John Lansdale, of Squire, Sanders & Dempsey, Cleveland, Ohio, for Standard Oil Co.; Stuart W. Thayer, of Sullivan & Cromwell, New York, N. Y., for British Petroleum Co., Ltd., British Petroleum (Overzee) N. V., British Petroleum (Holdings) Inc., and BP Oil Corp.

Final Judgment [*]

BATTISTI, D. J.: Plaintiff, United States of America, having filed its complaint herein on November 26, 1969, and the defendants by their respective attorneys, having appeared and consented to the entry of this Final Judgment:

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence or admission by any party hereto with respect to any such issue, and upon consent of all parties hereto, it is hereby,

Ordered, Adjudged and Decreed as follows:

I

[Jurisdiction]

This Court has jurisdiction of the subject matter of this action. This Court has jurisdiction over the defendants The Standard Oil Company, British Petroleum (Holdings) Inc. and BP Oil Corporation. Defendants The British Petroleum Company Limited and British Petroleum (Overzee) N. V., while denying that this Court would have jurisdiction over them in the absence of their voluntary submission to its jurisdiction, appear generally and, solely for all purposes of this case, voluntarily submit to the jurisdiction of this Court and consent to the entry of this Final Judgment. The Complaint states claims under which relief may be granted under Section 7 of the Act of Congress of October 15, 1914 as amended (15 U. S. C., Paragraph 18) commonly known as the Clayton Act.

II

[Definitions]

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As used in this Final Judgment:

- (A) "Person" shall mean an individual, partnership, firm, corporation or any other legal entity;
- (B) "Sohio" shall mean the defendant, The Standard Oil Company, an Ohio corporation;
- (C) "BP" shall mean the defendants, The British Petroleum Company Limited, British Petroleum (Overzee) N. V., British Petroleum (Holdings) Inc. and BP Oil Corporation, and each of them;
- (D) "Western Pennsylvania" shall mean that portion of the State of Pennsylvania composed of the fourteen counties of Allegheny, Armstrong, Beaver, Butler, Crawford, Erie, Fayette, Greene, Indiana, Lawrence, Mercer, Venango, Washington and Westmoreland ;
- (E) "Retail Outlet" shall mean an installation engaged in the sale of motor fuel to the consuming public and may include the business of the Fleetwing Corporation as an entity;
- (F) "BP State" shall mean Connecticut, Delaware, the District of Columbia, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont and Virginia.

III

[*Applicability*]

The provisions of this Final Judgment shall apply to a defendant, its officers, directors, agents, employees, subsidiaries, successors and assigns, and to those persons in active concert or participation with such defendant who receive actual notice of this Final Judgment by personal service or otherwise. Any person not a defendant herein who acquires by purchase or exchange any assets pursuant to this Final Judgment shall not be considered to be a successor bound by this Final Judgment.

IV

[*Divestiture of Ohio Stations*]

(A) Defendant Sohio is ordered and directed as follows:

- (1) Within four (4) years from the effective date of this Final Judgment, to divest itself of retail outlets accounting for taxable motor fuel volume in the State of Ohio of not less than Four Hundred Million (400,000,000) gallons per annum during the twelve (12) months period immediately preceding the respective dates of such divestiture;
- (2) The divestiture required by the foregoing paragraph (1) shall be absolute and unconditional, upon terms and conditions and to a person or persons first approved by the plaintiff or this Court, and shall be accomplished as follows:
 - (a) Retail outlets having an annual volume of not less than approximately One Hundred Thirty-three Million (133,000,000) gallons and not more than approximately Two Hundred Million (200,000,000) gallons of taxable motor fuel during the immediately preceding twelve (12) month period shall be divested by defendant Sohio to a single person who, at the time of such divestiture, is not then engaged, in the State of Ohio, in the retail sale of motor fuel;
 - (b) In addition to the divestiture hereinabove required by the preceding subparagraph (a) hereof, retail outlets having an annual volume of taxable motor fuel during the immediately preceding twelve (12) month period equal to approximately one half of the amount by which Four Hundred Million (400,000,000) gallons exceeds the volume divested or to be divested pursuant to the preceding subparagraph (a) hereof, shall be divested by defendant Sohio to a separate and different single person; Provided, however, that such person shall not, during the immediately preceding twelve (12) month period have sold more than two (2) percent of the total of all taxable motor fuel sold in the State of Ohio;
 - (c) In addition to the divestiture hereinabove required by the preceding subparagraphs (a) and (b) hereof, retail outlets having an annual volume of taxable motor fuel during the immediately preceding twelve (12) month

period equal to approximately one-half of the amount by which Four Hundred Million (400,000,000) gallons exceeds the volume divested or to be divested pursuant to subparagraph (a) hereof, shall be divested by defendant Sohio to not less than two (2) nor more than three (3) additional separate and different persons; Provided, however, that such persons shall not, during the immediately preceding twelve (12) month period have individually sold more than two (2) percent of the total of all taxable motor fuel sold in the State of Ohio;

(d) Of the total divestiture of retail outlets having an annual volume of Four Hundred Million (400,000,000) gallons of taxable motor fuel required by the foregoing provisions of this Subsection (A) of this Section IV, not less than one-third (1/3) thereof shall be accomplished within a period of two (2) years following the effective date of this Final Judgment, and an additional one-third (1/3) thereof shall be accomplished within a period of three (3) years following the effective date of this Final Judgment.

(B) The divestiture required by the foregoing Subsection (A) hereof may be accomplished by defendant Sohio, in whole or in part, or in combination, by (1) sales for cash or other assets, or (2) exchanges of retail outlets; Provided, however, that:

(i) In accomplishing the divestiture required under subparagraph (2)(a) of the foregoing Subsection (A) hereof, defendant Sohio is enjoined and restrained from acquiring, in any manner, any retail outlets in any BP State; and

(ii) In accomplishing the divestiture required under subparagraphs (2)(b) and (2)(c) of the foregoing Subsection (A) hereof, defendant Sohio is enjoined and restrained from acquiring, in any manner, any retail outlets for the sale of motor fuel in any state in which, in the twelve (12) month period immediately preceding such divestiture, retail outlets owned or controlled by defendant BP shall, in the aggregate, have sold more than two (2) percent of the total taxable motor fuel sold in such state.

(c) Not less than thirty-five (35) days prior to the closing date in any contract for sale or exchange made pursuant to this Section IV, defendant Sohio shall advise plaintiff in writing by letter directed to the Assistant Attorney General in charge of the Antitrust Division, United States Department of Justice, of the name and address of the proposed purchaser together with the terms and conditions of the proposed sale or exchange and other pertinent information (including information as to the taxable motor fuel market shares in the state or states involved of the party or parties to the transaction). Not more than thirty (30) days after its receipt of such information, plaintiff shall advise defendant Sohio in writing of any objection it may have to the consummation of the proposed sale or exchange. If no such objection is made known to defendant Sohio within such period, plaintiff shall be deemed to have approved such sale or exchange. If such an objection is made by plaintiff, then the proposed sale or exchange shall not be consummated unless approved by this Court or unless plaintiff's objection is withdrawn. The respective time periods set forth in this Section IV shall be tolled during the pendency of any proceeding in this Court under this Final Judgment relating to approval of a proposed sale or exchange which delays the consummation of the divestiture transaction proposed by defendant Sohio.

(D) Upon the written request to Sohio of any person acquiring any of the motor fuel volume required to be divested by defendant Sohio pursuant to this Final Judgment, defendant Sohio is ordered and directed to enter into a contract with such person to supply such person, upon reasonable terms and conditions, with such quantities of motor fuel as such person may require for sale through the retail outlets acquired by such person from defendant Sohio. In the event of the failure or inability of defendant Sohio and any such person making such written request to reach agreement, within sixty (60) days, either as to the quantities of motor fuel to be supplied by defendant Sohio or the terms and conditions thereof, either of such persons may apply to this Court for its determination of the issues in disagreement between the parties. In no event shall defendant Sohio be required under this Subsection (D) to enter into a contract for a term exceeding three (3) years.

V

[*Divestiture of Pennsylvania Stations*]

(A) Defendant BP, or in the alternative defendant Sohio, is ordered and directed, within four (4) years following the effective date of this Final Judgment, to divest itself of all retail outlets owned or controlled by it in Western Pennsylvania for the sale of motor fuel.

(B) The divestiture required by the foregoing Subsection (A) of this Section V shall be absolute and unconditional and shall be upon terms and conditions first approved by the plaintiff or by this Court.

(C) Not less than thirty-five (35) days prior to the effective date of any divestiture made pursuant to this Section V, defendant BP or Sohio, whichever is complying with Subsection (A) hereof, shall advise plaintiff in writing by letter directed to the Assistant Attorney General in charge of the Antitrust Division, United States Department of Justice, of the name and address of the proposed purchaser, if any, together with the terms and conditions of the divestiture and other pertinent information. Not more than thirty (30) days after its receipt of such information, plaintiff shall advise defendant BP or Sohio in writing of any objection it may have to the consummation of the proposed divestiture. If no such objection is made known to said defendant within such period, plaintiff shall be deemed to have approved such divestiture. If such an objection is made by plaintiff, then the proposed divestiture shall not be consummated unless approved by this Court or unless plaintiff's objection is withdrawn. The time period set forth in this Section V shall be tolled during the pendency of any proceeding in this Court under this Final Judgment relating to approval of a proposed divestiture which delays the consummation of such divestiture proposed by defendant BP, or in the alternative defendant Sohio.

VI

[*Periodic Reports*]

Defendant Sohio is ordered and directed to file with the plaintiff periodic reports each six (6) months after the effective date of this Final Judgment setting forth in reasonable detail the steps then taken by it to comply with Sections IV and V of this Final Judgment.

VII

[*Future Acquisitions*]

For a period of ten (10) years following the effective date of this Final Judgment defendants Sohio and BP are enjoined and restrained from acquiring (i) more than an aggregate of 1% of the stock of, or any other financial interest in, any person engaged in either the State of Ohio or Western Pennsylvania in the retail sale of motor fuel, or (ii) any retail outlets or any other assets (other than those acquired in the ordinary course of business) located in the State of Ohio and Western Pennsylvania, except upon sixty (60) days prior written notice to the plaintiff of such proposed acquisition. For purposes of this Section VII, any indebtedness owed by any person to Sohio or BP, as the case may be, shall not be deemed to constitute a financial interest on the part of Sohio or BP in such person.

VIII

[*Inspection and Compliance*]

(A) For the purpose of securing compliance with this Final Judgment and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant's principal office, be permitted, subject to any legally recognized privilege:

(1) Access during the office hours of such defendant, who may have counsel present, to those books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession under the control of such defendant which relate to any matter contained in this Final Judgment;

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding such matters.

(B) Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit such reports in writing and under oath or affirmation if so requested, with respect to the matters contained in this Final Judgment, as may from time to time be requested.

(C) No information obtained by the means provided in this Section VIII or Section VI of this Final Judgment shall be divulged by 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.

IX

[*Jurisdiction Retained*]

Jurisdiction is retained by this Court 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 modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

John Lansdale, Esquire
Squire, Sanders & Dempsey
1800 Union Commerce Building
Cleveland, Ohio 44115

Dear Mr. Lansdale:

This is to confirm our understanding of Section IV, Paragraph (A)(l) of the consent decree entered in *United States v. The Standard Oil Company, an Ohio corporation, et al.*, which provides that within a four year period Sohio will divest itself of retail outlets accounting for motor fuel volume in the State of Ohio of not less than 400 million gallons per year.

It is our understanding that a substantial portion of Sohio's retail motor fuel sales in Ohio are made through contract sales, i.e., sales to commercial consumers for their own use as distinguished from sales to the motoring public through retail outlets. It is also our understanding that Sohio makes retail motor fuel sales outside the State of Ohio under the "Fleetwing" brand in volume approximating 56 million gallons per year. Consequently, to the extent that Sohio divests itself of retail outlets selling "Fleetwing" brand motor fuel outside Ohio, which would be in addition to the divestiture required in Paragraph (A)(l), it may divest an equivalent volume of motor fuel disposed of under contract sales in Ohio and include said gallonage as part of the 400 million gallons to be divested in Ohio. To illustrate, if "Fleetwing" outlets accounting for 50 million gallons outside Ohio are divested by Sohio, 50 million of the 400 million gallons required to be" divested in Ohio may be accounted for by the divestiture of contract sales.

It is also our understanding that, at the time of the divestiture ordered under Section IV, Paragraph (A)(2)(b) and (c), there may be franchised retail outlets of which Sohio may divest itself, but which refuse to enter into franchise agreements with the purchaser of the divested assets (such outlets being referred to hereinafter as "non-transferred outlets"). In the event that Sohio divests itself of retail outlets selling "Fleetwing" brand motor fuel outside Ohio, thus making operable the provisions of the preceding paragraph of this letter, gallonage represented by non-transferred outlets may be included in the 400 million gallons required to be divested in Ohio subject to the following conditions:

- (1) the amount of contract sale gallonage which may be included, under the preceding paragraph of this letter, in the 400 million gallons required to be divested in Ohio shall be reduced by an amount equal to the gallonage represented by such non-transferred outlets; and
- (2) in no event shall the non-transferred outlet gallonage included in said 400 million gallons exceed 10% of the total gallonage to be divested under Section IV, Paragraph (A)(2)(b) and (c).

This paragraph shall have no application to the divestiture ordered under Section IV, Paragraph (A)(2)(a).

For purposes of initial compliance with the timing provisions of Paragraph IV(A)(2)(d) of the Final Judgment, you may proceed on the assumption that the “Fleetwing” outlets outside Ohio will ultimately be sold and thus include contract sales and gallonage represented by non-transferred outlets in your divestiture under Section IV. However, in the event there are no sales of “Fleetwing” outlets outside Ohio the full divestiture of 400 million gallons must ultimately be accomplished by the divestiture and transfer of retail outlets in Ohio as provided in Section IV, Paragraph (A) (l).

Divestiture of contract sale gallonage is, of course, subject to the approval requirements of Section IV, Paragraph (c) of the Decree.

Sincerely yours,
Walker B. Comegys
Acting Assistant Attorney General
Antitrust Division

Footnotes

- * Letter confirming parties' understanding follows decree.—CCH.