

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Atlantic Richfield Co. and Sinclair Oil Corp., U.S. District Court, S.D. New York, 1970 Trade Cases ¶73,280, (Aug. 28, 1970)

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United States v. Atlantic Richfield Co. and Sinclair Oil Corp.

1970 Trade Cases ¶73,280. U.S. District Court, S.D. New York. No. 69 Civ. 162. Entered August 28, 1970. Case No. 2038 in the Antitrust Division of the Department of Justice.

Clayton Act

Acquiring Competitors—Retail Gasoline Marketing Outlets—Divestiture—Consent Decree.— A large oil company was required by a consent decree to sell within three years all of the retail gasoline marketing outlets (except those located at agricultural farm centers) and bulk plants, terminals and related equipment in 14 states (except in six specified metropolitan areas) that the government had charged were illegally acquired by merger with a competitor. The company also was required to sell the following: a refinery at Sinclair, Wyoming; crude oil reserves and production in seven Wyoming oil fields supplying the refinery; natural gasoline plants and associated equipment in those fields; and the interest it had acquired in two refined product pipelines. In addition, the company was required to divest all contracts for the sale of unbranded automotive gasoline and other petroleum products produced at the Wyoming refinery and all customer lists, product agreements and other contracts that provide for the sale and delivery of the acquired firm's branded automotive gasoline completely within the divestiture states. The purchaser of these properties was granted the United States rights to the acquired firm's trademark subject to a third firm's present non-exclusive five-year license to use the trademark in the northeastern and southeastern states. Further, the company was forbidden for a period of five years from acquiring any refinery for the production of automotive gasoline in the United States. The company, with specified exceptions, also was barred from acquiring automotive gasoline marketing properties in the United States.

For the plaintiff: Richard W. McLaren, Asst. Atty. Gen., Baddia J. Rashid, William D. Kilgore, Jr., Charles D. Mahaffie, Jr., Robert J. Ludwig, Rodney O. Thorson and George H. Hempstead, III, Attys., Dept. of Justice.

For the defendants: Hughes, Hubbard & Reed, by Jerome G. Shapiro and Glassie, Pewett, Beebe & Shanks, by Edwin H. Pewett.

Final Judgment

MACMAHON, Judge: Plaintiff, United States of America, filed its complaint herein on January 15, 1969, alleging that the proposed merger between defendant Atlantic Richfield Company ("Atlantic Richfield") and defendant Sinclair Oil Corporation ("Sinclair") would violate [Section 7 of the Clayton Act](#). On February 17, 1969 this Court granted the Government's motion for a preliminary injunction. The Court vacated this injunction on March 4, 1969, at which time a Stipulation, Agreement, and Order was entered pursuant to which Atlantic Richfield merged with Sinclair and simultaneously sold, among other assets, the marketing properties of Sinclair in the Northeastern and Southeastern States (as defined in the complaint) to BP Oil Corporation.

Now, Therefore, 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 and the parties hereto. The Complaint states claims under which relief may be granted against defendants under Section 7 of the Act of Congress of October 15, 1914, as amended (15 U. S. C. Section 18), commonly known as the Clayton Act.

II.

[*Definitions*]

As used in this Final Judgment:

- (A) "Person" shall mean an individual, partnership, firm, corporation, or any other legal entity;
- (B) The "Divestiture States" shall mean Colorado, Idaho, Utah, Wyoming, North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Iowa, Missouri, Louisiana, Arkansas, and Oklahoma, except the metropolitan marketing areas of Tulsa, Oklahoma, Pine Bluff and Fort Smith, Arkansas, and Shreveport, Monroe, and Rayville, Louisiana.

III.

[*Applicability*]

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

IV.

[*Divestiture of Assets*]

- (A) Defendant Atlantic Richfield is ordered and directed to divest the following assets as a going concern to a single purchaser within three (3) years from the date of entry of this Final Judgment:
 - (1) All right, title and interest in retail marketing outlets for branded Sinclair automotive gasoline located in the Divestiture States, except those located at agricultural farm centers whose principal operation relates to the sale of agricultural chemicals and fertilizer;
 - (2) All contracts for the sale of unbranded automotive gasoline and other petroleum products that are produced at the Sinclair, Wyoming refinery for sale in the Divestiture States;
 - (3) All customer lists, product agreements, and other contracts which provide for the sale and delivery of branded Sinclair automotive gasoline completely within the Divestiture States except those incidental to the operation of agricultural farm centers whose principal operations relate to the sale of agricultural chemicals and fertilizer;
 - (4) All former Sinclair bulk plants, terminals and related equipment located in the Divestiture States to the extent reasonably necessary to support the former Sinclair automotive gasoline marketing operation, described in subparagraphs (1), (2) and (3) above;
 - (5) All right, title and interest in the Medicine Bow and Pioneer product lines formerly owned by Sinclair;
 - (6) The Sinclair, Wyoming refinery;
 - (7) All right, title and interest in former Sinclair oil producing leases, and associated equipment and natural gasoline plants located at the following fields, located in the State of Wyoming:
 - (a) Bailey Dome
 - (b) Crooks Gap
 - (c) Happy Springs
 - (d) Lost Soldier
 - (e) Mahoney Dome

(f) Big Sand Draw

(g) Wertz

(8) Sinclair's wholly-owned gathering and crude pipelines located in the State of Wyoming which transport the production of said fields to the Sinclair, Wyoming refinery.

(9) The United States rights to the trademark "Sinclair" subject to BP Oil Corporation's present non-exclusive five-year license to use such trademark in the Northeastern and Southeastern states as defined in the Complaint herein, and subject to reasonable non-exclusive rights in defendant Atlantic Richfield to use the trademark "Sinclair" for a period not exceeding two (2) years.

(B) Defendant Atlantic Richfield is ordered and directed to offer to any person purchasing the properties to be divested, a contract to supply such person for such period as may be requested by such person not exceeding three (3) years, upon reasonable terms and conditions, with such quantities of automotive gasoline as such person may require for sale through the retail outlets being divested, except to the extent that such outlets are, at the time of the offer, being supplied with automotive gasoline produced at the Sinclair, Wyoming refinery.

(C) The divestiture required by the foregoing subsection (A) shall be absolute and unconditional to a person and upon terms and conditions first approved by plaintiff or, failing such approval, by this Court.

(D) Defendant Atlantic Richfield is ordered and directed to request or solicit such consents or waivers in respect of the assignability of contracts, or to preferential rights of purchase or other restraints on alienation as may be held by third parties, affecting the contracts, properties, or interests to be divested.

(E) The purchase price for the properties to be divested pursuant to the foregoing paragraphs (A), (C), and (D) hereof may include exchange of producing properties anywhere, or retail marketing outlets and related assets outside the Divestiture States.

(F) Not less than sixty (60) days prior to the closing date in any contract for sale made pursuant to this Section IV, defendant Atlantic Richfield 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 and other pertinent information (including information as to the taxable automotive gasoline market shares in the state or states involved of the party or parties to the transaction). Not more than forty (40) days after its receipt of such information, and any additional necessary information requested by plaintiff within ten (10) days from the date of receipt of the initial information, plaintiff shall advise defendant Atlantic Richfield in writing of any objection it may have to the consummation of the proposed sale. If no such objection is made known to defendant Atlantic Richfield within such period, plaintiff shall be deemed to have approved such sale.

If such an objection is made by plaintiff, then the proposed sale 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.

V.

[Future Acquisitions]

For a period of five (5) years from the date hereof, defendant Atlantic Richfield shall not acquire from any person any interest in any refinery for the production of automotive gasoline in the United States; and for a period of ten (10) years from the date hereof, defendant Atlantic Richfield shall not acquire from any person any interest in any automotive gasoline retail marketing outlets in the United States, without prior approval of the plaintiff or this Court, other than (i) for a consideration not exceeding One Million Dollars (\$1,000,000.00); (ii) for a cumulative consideration not exceeding Five Million Dollars (\$5,000,000.00) in any one standard metropolitan statistical area as defined by the United States Bureau of the Budget, in which defendant Atlantic Richfield had no branded retail automotive gasoline outlets at the time of the initial acquisition; (iii) the acquisition of Atlantic Richfield

branded distributors; or (iv) as the result of enforcement of any bona fide lien, mortgage, deed of trust, or any other security interest held by defendant Atlantic Richfield 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 an Atlantic Richfield branded distributor; defendant Atlantic Richfield may also enforce such a security interest on a loan in excess of Ten Million Dollars (\$10,000,000.00), provided, however, that it shall be obliged to sell within three (3) years thereafter any assets acquired through such enforcement to the extent that they exceed Ten Million Dollars (\$10,000,000.00) in value, upon terms and conditions comparable to those applicable to the divestiture under Section IV hereof.

VI.

[*Periodic Reports*]

Defendant Atlantic Richfield is ordered and directed to file with the plaintiff periodic reports every 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 Section IV of this Final Judgment.

VII.

[*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 defendant Atlantic Richfield's principal office, be permitted, subject to any legally recognized privilege:

(1) Reasonable access during the office hours of defendant Atlantic Richfield, which may have counsel present, to those books, ledgers, accounts, correspondence, memoranda, and other records and documents in defendant Atlantic Richfield's possession or control which relate to any matter contained in this Final Judgment;

(2) Subject to the reasonable convenience of defendant Atlantic Richfield and without restraint or interference from it, to interview officers or employees of defendant Atlantic Richfield, 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, made to defendant Atlantic Richfield's principal office, defendant Atlantic Richfield shall submit such reports in writing with respect to any of 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 VII 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.

VIII.

[*Earlier Agreement*]

The Stipulation, Agreement and Order entered herein on March 4, 1969 is hereby vacated.

IX.

[*Retention of Jurisdiction*]

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.