

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Standard Oil Co. (New Jersey), Humble Oil and Refining Co., and Standard Oil Co. (Kentucky), U.S. District Court, W.D. Kentucky, 1961 Trade Cases ¶70,037, (Jun. 5, 1961)

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United States v. Standard Oil Co. (New Jersey), Humble Oil and Refining Co., and Standard Oil Co. (Kentucky). 1961 Trade Cases ¶70,037. U.S. District Court, W.D. Kentucky. Civil No. 3722. Dated June 5, 1961. Case No. 1425 in the Antitrust Division of the Department of Justice.

Sherman and Clayton Acts

Consent Decree—Exclusive Territories and Requirements Contracts—Termination of Existing Agreements—Merger with New Supply Source.—A consent decree requires the defendant marketing oil company to give notice of termination of a requirements contract to its supplier, also a defendant (eliminating that source of supply entirely in five years), and purchase specified minimum percentages of its requirements from independent producers within its marketing area during a period of 15 years. It appearing also that the defendant marketing company proposed to merge with a producing company not a party to the action (and the government not opposing the merger), that company was made a party subject to all provisions of the decree, and those portions relating to requirements purchases from independent producers made specific provision for supplies to be obtained from the producers with which the marketing company is to merge.

For the plaintiff; Lee Loevinger, Assistant Attorney General, W. D. Kilgore, Jr., Baddia J. Rashid, Gordon B. Spivack, John H. Waters, Harry W. Cladouhos, Melvin J. Duvall, Jr., Attorneys, Department of Justice.

For the defendants: Louis Seelbach, Charles G. Middleton, Jr., Middleton, Seelbach, Woolford, Willis and Cochran, for defendant Standard Oil Co. (Kentucky); Francis R. Kirkham, and Pillsbury, Madison and Sutro for defendant Standard Oil Co. of California.

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on December 2, 1958; defendants having filed answers to the complaint denying any violation of law; plaintiff, defendant Standard Oil Company (Kentucky) and Standard Oil Company of California (which has consented to be made a party hereto by the terms of this Final Judgment) by their respective counsel consenting to the entry of this Final Judgment;

Now, therefore, before any testimony has been taken and without trial or adjudication of any issue of fact or law herein, and upon said consent, it is hereby ordered, adjudged and decreed as follows:

I

This Court has jurisdiction of the subject matter hereof and of the parties signatory hereto. The complaint states claims for relief against the defendant Standard Oil Company (Kentucky) under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopoly," commonly known as the Sherman Act, as amended, and under Section 3 of the Act of Congress of October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act.

II

As used in this Final Judgment:

- (A) "Jersey" shall mean defendant Standard Oil Company (New Jersey) and all of its subsidiaries and affiliates, except foreign affiliates in which Jersey has less than fifty percent (50%) ownership and in which Socal has an interest;
- (B) "Kyso" shall mean defendant Standard Oil Company (Kentucky) and its subsidiaries;
- (C) "Socal" shall mean Standard Oil Company of California and all of its subsidiaries and affiliates controlled by Socal;
- (D) "Refined petroleum products" shall mean products resulting from the refining of crude oil except residual fuel oil and petrochemicals;
- (E) "Independent refiners" shall mean domestic refiners other than the companies which are or which become those among the twenty-one (21) largest domestic refiners as measured by the domestic operating crude oil capacity of the company and its subsidiaries and known affiliates. The determination of which refineries are "independent refineries" within the meaning of this Final Judgment shall be made from the annual report of the United States Bureau of Mines concerning domestic petroleum refineries and made as of the date of release of each such annual report. A refiner who is an independent refiner at the time it enters into any contract hereunder shall remain an independent refiner during the term of such contract.

III

- (A) It appearing to this Court, pursuant to Section 5 of the Sherman Act, that the ends of justice require that Socal, which intends to be successor to Kyso pursuant to merger or acquisition of stock or assets, be brought before this Court, Socal hereby appears as an additional party defendant waiving the necessity of being summoned and answering the complaint herein, and agreeing to be bound by the applicable provisions of this Final Judgment.
- (B) The provisions of this Final Judgment applicable to Kyso and Socal shall apply also to their successors, assigns, officers, directors, employees and agents, and to all other persons in active concert or participation with Socal or Kyso who receive actual notice of this Final Judgment by personal service or otherwise.

IV

Kyso and Socal are ordered and directed no later than June 30, 1961, to serve termination notice on Jersey as provided in paragraph [1] of the contract between Kyso and Jersey dated July 5, 1956, and to terminate said contract as early as possible in accordance with the terms of said paragraph II, or, if Jersey will agree, terminate the contract at any time after two years from the effective date of this Final Judgment, provided Jersey shall have given one year's notice of its agreement to such earlier termination.

V

- (A) Except as permitted in Section IV above, defendants Kyso and Socal are enjoined and restrained from obtaining any automotive gasoline, kerosene, heating oil or diesel fuel from Jersey for marketing within Louisiana, Arkansas, Tennessee, Kentucky, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, or West Virginia (hereinafter referred to as "said States").
- (B) Defendants Kyso and Socal are enjoined and restrained from obtaining, after July 1, 1966, any other refined petroleum products from Jersey for marketing in any of said States.

VI

[Requirements Sources]

- (A) Defendants Kyso and Socal are ordered and directed until July 1, 1976, to obtain at least forty percent (40%) of their requirements for automotive gasoline, kerosene, heating oil and diesel fuel for marketing within said States from independent refiners, provided such refiners are ready, willing and able to furnish such products of

suitable quality in economic quantities and at costs and upon terms and conditions as favorable as may be at the time available from other sources.

(B) In the event that Kyso and Socal cannot obtain forty percent (40%) of their requirements of the products specified in subsection (A) above in accordance with the terms of that subsection, Kyso and Socal may enter into any contracts, agreements or other arrangements, with refiners other than independent refiners and Jersey, but for terms of not longer than one year, under which Kyso and Socal will acquire the products specified above for marketing in said States.

(C) Defendants Kyso and Socal are ordered and directed, except for emergency purchases,

(1) from and after July 1, 1966, to obtain their requirements for refined petroleum products other than the products specified in subsection (A) above, and

(2) from and after July 1, 1976, to obtain all of their requirements of automotive gasoline, kerosene, heating oil and diesel fuel

for marketing within said States, which requirements are not supplied by refineries of Kyso and Socal, from independent refiners, provided such refiners are ready, willing and able to furnish such products of suitable quality in economic quantities and at costs and upon terms and conditions as favorable as may be at the time available from other sources.

(D) Nothing in subsections (A) or (B) above shall require Kyso and Socal to obtain, prior to January 1, 1966, from independent refiners or other refiners, products specified in said subsections in an amount greater than the requirements of Kyso and Socal for said products for marketing in said States remaining after their purchases from Jersey in accordance with the provisions of Section IV hereof, plus (after the time Socal's and Kyso's Gulf Coast refinery is in production) either 55,000 barrels per day of said products, or sixty percent (60%) of Kyso's and Socal's said requirements for said products, whichever is greater.

(E) In determining whether Kyso and Socal have discharged their obligations under subsections (A) and (B) above, all of the specified products other than automotive gasoline may be aggregated. If Kyso and Socal shall obtain blending stocks and feed stocks, of distillate gravity and lighter, from independent refiners, such acquisitions shall discharge *pro tanto* the obligation of Kyso and Socal to purchase products made therefrom.

(F) Kyso and Socal shall in good faith endeavor to obtain the percentage of products referred to in subsections (A) and (B) hereof during each year, but shipments of product may be allocated forward or backward in reasonable amounts at the end of each year in computing the volume of products obtained.

(G) If at any time, and from time to time, after January 1, 1965, or after the date the contract referred to in Section IV above with Jersey shall have been earlier terminated in accordance with the provisions of said Section if such event shall occur, Socal and Kyso, after diligent and thorough review of normal refinery sources of supply, both independent and others, are unable to obtain from all such sources a portion of the forty percent (40%) of their requirements of the products specified in subsection (A) above, of suitable quality and in economic quantities and on a firm contractual basis for a period of one year in advance at fair competitive costs, then Kyso and Socal may supply such deficiency from their own refineries, and if they are unable for two consecutive years to obtain a portion of their said requirements as above set forth and upon a satisfactory showing to the plaintiff that such portion is not so available, the percentage of Kyso's and Socal's requirements which they are ordered and directed to obtain hereunder shall be reduced by the percentage of their said requirements which they are then unable so to obtain and their obligation to obtain product hereunder shall be correspondingly reduced to the extent that said amount exceeds 1,000,000 barrels per year.

(H) If at any time, and from time to time, after January 1, 1966, or after one year from the date the contract referred to in Section IV above with Jersey shall have been earlier terminated in accordance with the provisions of said Section if such event shall occur, Socal and Kyso, after diligent and thorough review of normal independent refinery sources of supply, are unable to obtain from independent refiners for two successive years a portion of the forty percent (40%) of their requirements of the products specified in subsection (A) above, of suitable quality, in economic quantities, at costs and upon terms and conditions at least as favorable as may

be at the time available from other sources and on a firm contractual basis for a period of one year in advance, and upon a satisfactory showing to the plaintiff that such portion is not so available, then Kyso and Socal may thereafter supply from their own refineries the percentage of their requirements of said products which they are then unable so to obtain, and their obligation to obtain product hereunder shall be correspondingly reduced, if such reduction shall exceed the reduction provided in subsection (G) above, to the extent that said amount exceeds 1,000,000 barrels per year.

(I) During the period beginning July 1, 1961, through July 1, 1976, Kyso and Socal are enjoined from entering into any contract, agreement or other arrangement with any one single independent refiner under the terms and conditions of which Kyso and Socal will obtain more than approximately fifteen percent (15%), as of the date of the contract, of their total requirements of automotive gasoline, kerosene, heating oil and diesel fuel, for marketing within said States, unless other independent refiners are not ready, willing and able to furnish such products of suitable quality in economic quantities and at costs and upon terms and conditions as favorable as may be at the time available from other sources.

(J) Defendants Kyso and Socal shall annually report to the plaintiff their acquisitions of refined petroleum products indicating the nature of their compliance with subsections (A) and (B) above.

VII

Kyso and Socal are enjoined and re-strained from arbitrarily refusing to continue to sell to rebrand jobbers and rebrand resellers presently being supplied by Kyso the refined petroleum products currently being supplied to the particular rebrand jobber or rebrand reseller who desires to obtain such products for resale in said States. Kyso and Socal shall conduct negotiations with said rebrand jobbers and rebrand resellers in good faith to reach an agreement upon terms and conditions that are reasonable under all then existing circumstances.

VIII

Kyso and Socal are enjoined and restrained from entering into, adhering to or claiming any rights under any contract, agreement or other arrangement with Jersey or any other petroleum company allocating or dividing domestic territories or markets for the sale of any refined petroleum products, provided, however, that this Section shall not be deemed to prohibit otherwise lawful distribution contracts, agreements or other arrangements.

IX

[Supervision]

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

(A) Access during office hours of Kyso or Socal to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession of or under the control of Kyso or Socal, who may have counsel present, relating to any of the matters contained in this Final Judgment; and

(B) Subject to the reasonable convenience of Kyso or Socal, and without restraint or interference, to interview the officers and employees of Kyso or Socal, who may have counsel present, regarding any such matters.

For the purpose of securing compliance with this Final Judgment, Kyso or Socal, upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, made to its principal office, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the enforcement of this Final Judgment.

No information obtained by the means permitted in this Section IX 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 for the purpose of securing compliance with this Final Judgment in which the United States is a party or as otherwise required by law. If any such information is divulged to a duly authorized representative of the Executive Branch, outside the Department of Justice, such information shall be given after notice to the defendant and on the condition that it will not be revealed to any person outside of such representative's Department or agency except where required by regulation or statute or pursuant to court process.

X

Jurisdiction is retained for the purpose of enabling any of the signatories to this Final Judgment, and no others, 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, or for the modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof

XI

This Final Judgment shall take effect thirty (30) days after the consummation of the merger of Kyso and Socal or the acquisition by Socal of Kyso's stock or assets and shall continue in effect for twenty (20) years thereafter.