

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA, §
§
Plaintiff, §
§ Civil Action No. 4763
v. §
§ Filed: February 21, 1968
CONTINENTAL OIL COMPANY, §
§
Defendant. §

FINAL JUDGMENT

Plaintiff, the United States of America, filed its Complaint herein on May 16, 1961; and after trial by this Court, a Final Judgment was entered dismissing the case on September 20, 1965. The Supreme Court of the United States on May 29, 1967 vacated said Final Judgment of September 20, 1965 and ordered reconsideration of this case. Following the submission of memoranda and oral argument; and the Court having entered findings of fact and conclusions of law,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

I.

This Court has jurisdiction of the subject matter of this action and of the parties hereto pursuant to Section 15 of the Act of Congress of October 15, 1914 (15 U.S.C. § 25), as amended, commonly known as the Clayton Act. The acquisition of the properties of Malco Refineries, Inc. by defendant Continental Oil Company (Conoco) is in violation of Section 7 of the Clayton Act (15 U.S.C. § 18).

II.

The provisions of this Final Judgment applicable to Conoco shall also apply to each of its directors, officers, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

III.

(A) Conoco is ordered and directed, within twelve (12) months from the date this Judgment becomes final, to divest itself of all of its right, title and interest in the following properties:

(1) The Artesia refinery plant facilities and related assets (including any transferable crude oil import quota allocable or attributable to the refinery facilities); and

(2) The following pipelines connected with said refinery:

(a) incoming pipelines: The crude oil system, the LPG system; any natural gas lines used or useable to supply fuel gas; and (b) outgoing pipelines: the petroleum products line running from said refinery to El Paso, Texas (excluding Conoco's interest in the products terminals at El Paso, Texas; Albuquerque, New Mexico; and Tucson and Phoenix, Arizona), and the jet fuel pipeline (including delivery facilities) running from said refinery to Walker Air Force Base near Roswell, New Mexico.

(B) Conoco is ordered and directed to publicize the availability of the above properties for sale in appropriate trade and/or financial publications and, in general, to promote the expeditious sale thereof. Sale shall be upon terms and to a person approved by this Court and it is the intent of the Court that the purchaser can be expected to operate the refinery and other properties acquired primarily but not exclusively as a supplier of gasoline to independent marketers.

(C) Conoco is ordered and directed to render bi-monthly written reports to the Court, with copies to the plaintiff, detailing its efforts to comply with subsection (A) above, and the results of such efforts, including every offer to buy which it received. Plaintiff or Conoco may apply to this Court for approval or disapproval of any proposal for the sale of said facilities.

(D) Conoco is ordered and directed to furnish to all bona fide prospective purchasers all relevant information regarding said facilities, and to permit them to inspect such facilities, at reasonable hours.

IV.

For a period of ten (10) years from the date of entry of this Final Judgment, Conoco shall not without first obtaining the approval of this Court, acquire directly or indirectly (excluding construction by Conoco), any interest in any of the following businesses or facilities in the State of New Mexico:

(a) any oil refinery;

(b) any wholesale distributor of gasoline, provided this subsection (b) shall not prohibit in each twelve (12) month period any acquisitions of such businesses having combined annual sales of not more than \$250,000 or acquisitions of wholesale distributors who have been selling gasoline ^{exclusively} under the trademark "CONOCO" for a period of at least one year prior to their acquisition by Conoco or acquisitions of retail outlets, but this is without prejudice to any claim asserted by the plaintiff in a subsequent antitrust action with respect to the acquisition of retail outlets.

V.

For the purpose of determining and securing compliance with this Final Judgment, and for no other purposes, duly authorized representatives of the Department of Justice shall, on written request of the Assistant Attorney General in charge of the Antitrust Division and on reasonable written notice to Conoco made to its principal offices, be permitted, subject to any legally recognized privilege:

(i) access, during the office hours of Conoco, which may have counsel present, to those books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Conoco regarding the subject matters contained in this Final Judgment, provided, upon such written request, Conoco shall submit reports in writing in respect to any such matters as may from time to time be requested; and

(ii) subject to the reasonable convenience of Conoco and without restraint or any interference from

it, to interview officers or employees of Conoco, who may have counsel present, regarding any such matters.

No information obtained by the means provided in this Section V 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 United States, except in the course of a legal proceeding in which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VI.

Jurisdiction of this cause is retained by the Court for the purpose of enabling any of the parties to this Final Judgment to apply to the Court at any time for such further orders or 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, and for the enforcement of compliance therewith and the punishment of violations thereof.

VII.

Defendant Continental Oil Company shall pay such costs as shall be taxed against it by the Court.

ENTERED this 21st day of February, 1968.

H. Earle Payne
United States District Judge

APPROVED AS TO FORM:

By Lawrence W. Somerville
Attorney for the United States

By David T. Leads
Attorney for defendant
Continental Oil Company

THIS COPY SERVES AS NOTICE
OF ENTRY ON 2-21-68
E. E. GREESON, Clerk