

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. E. I. du Pont de Nemours & Co., Inc., U.S. District Court, D. District of Columbia, 1982-1 Trade Cases ¶64,479, (Nov. 20, 1981)

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United States v. E. I. du Pont de Nemours & Co., Inc.

1982-1 Trade Cases ¶64,479. U.S. District Court, D. District of Columbia, Civ. No. 81-1837, Entered November 20, 1981, (Competitive impact statement and other matters filed with settlement: 46 *Federal Register* 41640).

Case No. 2900, Antitrust Division, Department of Justice.

Clayton Act

Acquisitions: Joint Venture Between Acquired Firm and Competitor: Purchase of Competitor's Interest in Joint Venture: Consent Decree.— A firm that acquired a joint venturer of a competitor was required under a consent decree to purchase the competitor's interest in the joint venture so the acquisition could stand. Acquisition of the joint venture in itself would have enabled the acquirer to obtain competitively sensitive information from the competitor and to have the opportunity of affecting the competitor's production. Until the firm acquired the competitor's interest in the joint venture, it was ordered not to attempt to influence the joint venture operation or to acquire sensitive information.

For plaintiff: William F. Baxter, Asst. Atty. Gen., Mark Leddy, Roger B. Andewelt, P. Terry Lubeck, Joseph T. Melillo, Nicholas W. Clark, Sanford M. Adler, and Andrew D. Caverly, Attys., Antitrust Div., Dept. of Justice. **For defendant:** Covington & Burling, by Daniel M. Gribbon, Washington, D. C., and John F. Schmutz and Vernon R. Rice, Attys., E. I. du Pont de Nemours & Co., Inc., Wilmington, Del.

Final Judgment

Green, D. J.: Plaintiff, United States of America, having filed its complaint herein on August 4, 1981, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

Now, Therefore, before the taking of any testimony 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 of the subject matter of this action and of each of the parties consenting hereto. The complaint states a claim upon which relief may be granted against defendant under [Section 7 of the Clayton Act](#) (15 U. S. C. §18).

II.

[Definitions]

As used in this Final Judgment:

(A) "Du Pont" means E. I. du Pont de Nemours & Co., Inc., all Entities controlled by it either directly or indirectly, or acting on its behalf; and their successors. It does not include Conoco or the Joint Venture.

(B) "Conoco" means Conoco, Inc.; all Entities controlled by it either directly or indirectly, or acting on its behalf; and their successors. It does not include Du Pont or the Joint Venture.

(C) "Joint Venture" means the joint venture created by the Monsanto-Conoco Joint Venture Agreement dated October 1, 1977, including the Facilities as defined in the Monsanto-Conoco Joint Venture Agreement dated October 1, 1977, and the New Process Facilities as defined in the Conoco-Monsanto Feedstock Agreement dated October 1, 1977.

(D) "Monsanto" means Monsanto Company; all Entities controlled by it either directly or indirectly, or acting on its behalf; and their successors. It does not include the Joint Venture.

(E) The definition of "Entity" contained in 16 C. F. R. §801.1 is incorporated herein by reference.

III.

[Applicability]

This Final Judgment applies to defendant and to its officers, directors, agents, employees, subsidiaries, successors, and assigns, and to all other Entities in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV.

[Joint Venture]

The purpose of this Final Judgment is to prohibit Du Pont from participating with Monsanto in the Joint Venture. In the event the transfer of right, title, and interests provided for in the Agreement between Du Pont and Monsanto dated August 3, 1981 ("Agreement"), attached hereto as Exhibit A and incorporated by reference herein, has not occurred by the date of entry of this Final Judgment, Du Pont shall:

(A) Proceed to take such steps as may be necessary to require performance of Monsanto's obligations under the Agreement;

(B) Purchase Monsanto's interest in the Joint Venture at the same price and under the same terms and conditions of the Agreement; and

(C) Abide by the terms of the Stipulated Hold Separate Order entered in this action on August 4, 1981, and attached hereto as Exhibit B.

Furthermore, plaintiff may apply to this Court at any time for further relief to effectuate the purpose of this Final Judgment.

V.

[Business Information]

Until (1) the sale, conveyance, and transfer of right, title, and interests as provided for in the agreement between Monsanto and Du Pont dated August 3, 1981, (2) any other sale, conveyance, and transfer to Du Pont of the right, title, and interests to which the agreement refers, or (3) any sale, conveyance, and transfer by Du Pont of Conoco's interest in the Joint Venture, Du Pont is ordered and directed not to influence or attempt to influence, directly or indirectly, any operational or financial decisions or actions of the Joint Venture and not to obtain, directly or indirectly, from the Joint Venture any information, except (1) information that is clearly necessary for Du Pont to comply with federal, State, or local laws and regulations, and (2) information that is clearly necessary for Du Pont to carry out the Agreement. In no event, however, may Du Pont obtain information (1) from which Du Pont could derive (a) the quantity, quality, or point of origin of one or more products supplied to the Joint Venture by Monsanto, or (b) the quantity or production costs of one or more particular products produced by the Joint Venture or Monsanto, or (2) about Monsanto's operations apart from the Joint Venture. Except during the ten (10) day period for Monsanto to sell, convey, and transfer its right, title, and interests as provided in

the agreement between Monsanto and Du Pont dated August 3, 1981, Du Pont shall not obtain from Conoco or the Joint Venture any information about the Joint Venture or Monsanto unless the information is written and furnished in response to a written request by Du Pont. Du Pont shall promptly transmit to Monsanto a copy of each such request and all information that Du Pont obtains from Conoco or the Joint Venture in response to the request.

VI.

[Inspection]

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to its principal office, be permitted:

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

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

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendant's principal office, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

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

(C) If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendant is not a party.

VII.

[10-Year Term]

This Final Judgment will expire on the tenth anniversary of its date of entry or upon motion by plaintiff.

VIII.

[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 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 hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

IX.

[Public Interest]

Entry of this Final Judgment is in the public interest.

Exhibit A

Agreement

Monsanto agrees to sell, convey and transfer to either Conoco or Du Pont at the latter's option ten (10) days after Du Pont shall acquire control of Conoco all of Monsanto's right, title and interest, exclusive of working capital, in the Facilities as defined in the Monsanto-Conoco Agreement dated October 1, 1977, ("Chocolate Bayou Agreement") and New Process Facilities as defined in the Conoco-Monsanto Feedstock Agreement dated October 1, 1977, for the following consideration:

- (i) \$275,000,000 to be paid ten (10) days after Du Pont shall acquire control of Conoco; plus
- (ii) such additional amount, if any, to be mutually agreed upon by Monsanto and Du Pont within six (6) months following the acquisition of control of Conoco by Du Pont as representing, when added to the amount set out in (i), the fair value of the right, title and interest in the Facilities transferred by Monsanto and, failing such agreement, such amount will be determined by an appraiser chosen by Monsanto and Du Pont, or in the event of their failure to appoint an appraiser, by an appraiser selected by the American Arbitration Association, who in determining fair value shall take into consideration such criteria as the appraiser deems to be appropriate for determining the fair value of the Facilities to be transferred by Monsanto. Such additional amount shall be payable to Monsanto ten (10) days after it has been finally determined as provided in this Section (ii).

This Letter Agreement and the transaction contemplated hereby shall be promptly ratified by the Boards of Directors of both parties. The Management of each party shall use reasonable efforts to obtain such ratification promptly.

Upon execution of this Letter Agreement both parties will proceed diligently with the negotiation and execution of definitive written agreements. It is, however, the intent of the parties that this Letter Agreement shall be binding on all parties.

Exhibit B

Stipulated Hold Separate Order

Definitions

- 1. "Du Pont" means E. I. du Pont de Nemours & Co., Inc.; all Entities controlled by it either directly or indirectly, or acting on its behalf; and their successors. It does not include Conoco or the Joint Venture.
- 2. "Conoco" means Conoco, Inc.; all Entities controlled by it either directly or indirectly, or acting on its behalf; and their successors. It does not include Du Pont or the Joint Venture.
- 3. "Joint Venture" means the joint venture created by the Monsanto-Conoco Joint Venture Agreement dated October 1, 1977, including the Facilities as defined in the Monsanto-Conoco Joint Venture Agreement dated October 1, 1977, and the New Process Facilities as defined in the Conoco-Monsanto Feedstock Agreement dated October 1, 1977.
- 4. "Monsanto" means Monsanto Company; all Entities controlled by it either directly or indirectly, or acting on its behalf; and their successors. It does not include the Joint Venture.
- 5. The definition of "Entity" contained in 16 C. F. R. §801.1 is incorporated herein by reference.

Hold Separate Order

- 1. Du Pont shall take all steps necessary to assure that Conoco will be maintained as a separate subsidiary with its assets and operations separate from those of Du Pont.

2. Du Pont shall take all steps necessary to assure that Conoco will be continued as an economically viable going business.
3. Neither Du Pont nor Conoco shall dispose of any of the asset of Conoco, other than in the ordinary course of Conoco's business, without the prior approval of the Antitrust Division.
4. Du Pont is ordered and directed not to influence or attempt to influence, directly or indirectly, any operational or financial decisions or actions of the Joint Venture and not to obtain, directly or indirectly, from the Joint Venture any information, except (1) information that is clearly necessary for Du Pont to comply with federal, state, or local laws and regulations, and (2) information that is clearly necessary for Du Pont to carry out the agreement between Monsanto and Du Pont dated August 3, 1981. In no event, however, may Du Pont obtain information (1) from which Du Pont could derive (a) the quantity, quality, or point of origin of one or more products supplied to the Joint Venture by Monsanto, or (b) the quantity or production costs of one or more particular products produced by the Joint Venture of Monsanto, or (2) about Monsanto's operations apart from the Joint Venture. Except during the ten (10) day period for Monsanto to sell, convey, and transfer its right, title, and interests as provided in the agreement between Monsanto and Du Pont dated August 3, 1981, Du Pont shall not obtain from Conoco or the Joint Venture any information about the Joint Venture or Monsanto unless the information is written and furnished in response to a written request by Du Pont. Du Pont shall promptly transmit to Monsanto a copy of each such request and all information that Du Pont obtains from Conoco or the Joint Venture in response to the request.
5. The provisions above shall apply until (1) the sale, conveyance, and transfer of right, title, and interests as provided for in the agreement between Monsanto and Du Pont dated August 3, 1981, (2) any other sale, conveyance, and transfer to Du Pont of the right, title, and interests to which the agreement refers, or (3) any sale, conveyance, and transfer by Du Pont of Conoco's interest in the Joint Venture.