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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff,	72-676-HP
	Civil No.
v.	Filed: 3/27/72
TEXACO INC. and DOUGLAS OIL COMPANY OF CALIFORNIA,	(15 U.S.C. §§ 18, 25)
	COMPLAINT FOR
Defendants.	(Antitrust Injunction)

Rescission Requested LWS

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendants, and complains and alleges as follows:

JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted against the above-named defendants under Section 15 of the Act of Congress of October 15, 1914, as amended (15 U.S.C. § 25), commonly known as the Clayton Act, in order to prevent and restrain the continuing violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act (15 U.S.C. § 18).

2. Both of the defendants transact business and are found within the Central District of California.

II

DEFENDANTS

3. Texaco Inc. (hereinafter referred to as "Texaco") is made a defendant herein. Texaco is a corporation organized and existing under the laws of the State of Delaware and has its principal office in New York City, New York. Each reference to Texaco herein includes its subsidiaries.

4. Douglas Oil Company of California is made a defendant herein. Douglas Oil Company of California is a corporation organized and existing under the laws of the State of California and has its principal office in Los Angeles, California. Douglas Oil Company of California is a wholly-owned subsidiary of Continental Oil Company, a Delaware corporation, and was organized for the purpose of acquiring the assets of Douglas Oil Co. of California, a California corporation organized in 1946. Substantially all of the assets of Douglas Oil Co. of California were transferred to Douglas Oil Company of California on April 13, 1961, the same date on which the latter corporation was organized. Whenever hereinafter used, the term "Douglas" refers to Douglas Oil Company of California and Douglas Oil Co. of California during the applicable periods and includes their subsidiaries.

III

DEFINITIONS

5. As used herein, the term:

(a) "major brand" means a brand of gasoline sold to consumers through service stations and other outlets marketing under the trademarks and trade names of one of the "major" petroleum companies, i.e. one of the nineteen or twenty largest, fully integrated companies marketing gasoline in the United States;

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(b) "independent brand" means a brand of gasoline sold to consumers through service stations and other outlets marketing under the trademarks and trade names of any company other than one of the major petroleum companies; and

(c) "Pacific Coast area" means that area of the United States encompassed by the States of California, Oregon, Washington and Nevada.

IV

TRADE AND COMMERCE

6. Texaco is the second largest petroleum company in the United States and the third largest domestic industrial corporation in total assets. As of December 31, 1970, its total assets were approximately $9,923,000,000 and its consolidated gross income in 1970 was approximately $6,777,000,000.

7. Texaco is a fully integrated petroleum company engaged in the production of crude oil and natural gas, the transportation of crude oil and the products derived therefrom, the refining of crude oil into refined petroleum products, and the marketing and distribution of refined petroleum products.

8. Texaco owns and operates twelve refineries in the United States, which in 1970 had a total crude oil capacity in excess of 948,000 barrels per day. Texaco ranked second among domestic petroleum companies in refining capacity in 1969. In the Pacific Coast area, the Texaco refineries located at Wilmington, California and Anacortes, Washington have a total refining capacity of approximately 120,000 barrels of crude oil per day.

9. Texaco is the leading marketer of gasoline in the United States, selling its gasoline through more than 40,200 branded retail outlets located in all 50 states and in the District of Columbia. During the first quarter of 1971, approximately 1,117,000,000 gallons of Texaco brand gasoline were sold in the United States,

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amounting to approximately 8% of all gasoline sold in the United States during that period.

10. In 1970 Texaco sold approximately 987,000,000 gallons of gasoline through more than 2800 branded retail outlets in the Pacific Coast area. Texaco was the sixth largest marketer of gasoline in that area during 1970 with about 8.3% of all gasoline sales.

11. In 1970 Texaco sold approximately 680,000,000 gallons of gasoline through more than 2100 branded retail outlets in the State of California. Texaco was the sixth largest marketer of gasoline in that state during 1970 with about 7.5% of all gasoline sales. During the same year, Texaco was the second largest marketer of gasoline in the State of Washington with about 355 branded retail outlets and 11.9% (182,000,000 gallons) of all gasoline sales; the fifth largest marketer of gasoline in the State of Oregon with at least 210 outlets and about 9.1% (96,000,000 gallons) of all gasoline sales; and the fourth largest marketer of gasoline in the State of Nevada with about 65 outlets and 9.3% (29,000,000 gallons) of all gasoline sales.

12. Prior to the 1961 acquisition of Douglas by Continental Oil Company, Douglas was engaged in the refining and marketing of gasoline under the Douglas independent brand through service stations which it owned or leased at various locations throughout the Pacific Coast area. The policies of Douglas were such that this gasoline was sold at retail price levels below those of major brands of gasoline, including the Texaco brand. Douglas, as a subsidiary of Continental Oil Company, has continued to supply gasoline to its retail outlets at prices which permit such outlets to market gasoline below the retail prices of major brand service stations, including service stations selling Texaco branded gasoline.

13. For many years Douglas has been either the largest or second largest marketer of independent brand gasoline in the Pacific

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Coast area. In 1970 Douglas sold approximately 329,000,000 gallons of gasoline through about 465 branded retail outlets in the Pacific Coast area. Douglas accounted for about 2.8% of all gasoline sales in that area during 1970.

14. In 1970 Douglas sold approximately 267,000,000 gallons of gasoline through at least 350 branded retail outlets in the State of California. Douglas was the tenth largest marketer of gasoline in that state during 1970 with about 2.95% of all gasoline sales. During the same year, Douglas was the eleventh largest marketer of gasoline in the State of Washington with over 50 branded retail outlets and about 2.75% (42,000,000 gallons) of all gasoline sales; the thirteenth largest marketer of gasoline in the State of Oregon with at least 45 outlets and about 1.5% (15,500,000 gallons) of all gasoline sales; and the thirteenth largest marketer of gasoline in the State of Nevada with at least 14 outlets and about 1.6% (5,100,000 gallons) of all gasoline sales.

15. In 1970, six major petroleum companies, including Texaco, accounted for approximately 70% of all gasoline sales in the Pacific Coast area. The ten largest marketers accounted for approximately 87% of the gasoline sales in that area. During the same year, six major petroleum companies, including Texaco, accounted for approximately 70% of the gasoline sales in the State of California, and the ten largest marketers, including Douglas, accounted for about 87% of such sales; six major petroleum companies, including Texaco, accounted for approximately 70% of the gasoline sales in the State of Washington, and the ten largest marketers accounted for about 88% of such sales; six major petroleum companies, including Texaco, accounted for approximately 67% of the gasoline sales in the State of Oregon, and the ten largest marketers accounted for about 84% of such sales; six major petroleum companies, including Texaco, accounted for approximately 65% of the gasoline sales in the State of Nevada, and the ten largest marketers accounted for about 80% of such sales.

16. Gasoline marketed through service stations is a fungible product. As such, price is often a prime consideration for the consumer in the purchase of gasoline. The prices of the various grades of gasoline sold at service stations are customarily displayed on large curbside placards or prominent electrically illuminated signs. Independent brand marketers have generally sought to compete against the national promotion, service and credit policies of the major petroleum companies by emphasizing price competition and have retailed their gasoline at one or more cents per gallon below the prices of the major brand marketers. The presence of independent brand marketers in the Pacific Coast area has constituted an important check on increases in the retail prices of gasoline.

17. Douglas refines crude oil at refineries located at Santa Maria and Paramount, California. The refinery at Paramount has supplied a substantial portion of the gasoline marketed by Douglas in the State of California. Additional quantities of gasoline marketed by Douglas in the Pacific Coast area have been acquired through nationwide exchange agreements between Douglas and/or Continental Oil Company and other refiners of gasoline. Substantial quantities of crude oil utilized in the manufacture of gasoline by Douglas at its Paramount refinery have been shipped into the State of California from Canada or other foreign countries. Texaco has utilized large quantities of crude oil produced in foreign countries in the operation of its refinery at Wilmington, California. Substantial quantities of the gasoline and other refined petroleum products manufactured at Texaco's refineries in Wilmington and Anacortes, Washington have been distributed and marketed by Texaco in interstate commerce to bulk-brand distributors and retail outlets located throughout the Pacific Coast area. Texaco and Douglas have been and are both engaged in interstate commerce.

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V

OFFENSE

18. Pursuant to an Agreement entered into on or about December 29, 1970 and an Agreement of Purchase and Sale dated January 25, 1971, defendant Texaco acquired a fee or leasehold interest in approximately 58 Douglas service stations, all of which were located in the Counties of Los Angeles, Orange and San Bernardino, California. Under the terms of these agreements, Texaco agreed to supply Douglas for a period of eighteen months with gasoline at Los Angeles, California and Seattle, Washington.

19. On August 30, 1971, Douglas and Texaco entered into an Agreement of Purchase and Sale under the terms of which Douglas transferred to Texaco on or about October 1, 1971 its fee or leasehold interests in approximately 164 Douglas service stations, 122 of which are located in California, 15 in Oregon, 23 in Washington and four in Nevada. Under the terms of the agreement of August 30, 1971, Texaco agreed to pay to Douglas approximately $20,500,000 as the purchase price for said service stations.

20. The effect of the acquisition of Douglas' assets and operations pursuant to the transactions and agreements described in paragraphs 18 and 19 of this Complaint may be substantially to lessen competition or to tend to create a monopoly in violation of Section 7 of the Clayton Act, as amended, in the following ways, among others:

(a) actual and potential competition between Texaco and Douglas in the retail marketing of gasoline in the Pacific Coast area and in the State of California and certain other submarkets has been and will be eliminated;

(b) price competition in the sale of gasoline provided by independent brand marketers such as Douglas has been and will be reduced;

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(c) competition generally in the retail marketing of gasoline in the Pacific Coast area and in the State of California and certain other submarkets has been and will be reduced; and

(d) concentration in the distribution and sale of gasoline in the Pacific Coast area and in the State of California and certain other submarkets has been and will be increased.

PRAYER

WHEREFORE, the plaintiff prays:

1. That the above described acquisitions be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act.

2. That the defendants herein be ordered to rescind the agreements described in paragraphs 18 and 19 of this Complaint, as well as all ancillary agreements in connection therewith and to take all appropriate action, consistent with such recision, for the complete restoration of the acquired Douglas service stations as an independent brand gasoline marketing organization.

3. That, for a period of ten years, except with the prior approval of the plaintiff or the Court, Texaco, its successors and assigns, its officers, directors, agents, employees and all other persons acting on its behalf, be enjoined from acquiring the stock or assets of any person, company or corporation engaged in the refining, distribution or marketing of gasoline in the Pacific Coast area.

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4. That plaintiff have such other, further, general and different relief as the nature of the case may require and the Court may deem just and proper.

5. That the plaintiff recover its taxable costs.

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