

IN THE MATTER OF
ETHYL CORPORATION, ET AL.

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9128. Complaint, May 30, 1979—Final Order, March 22, 1983

This Final Order requires the nation's two leading producers of lead-based antiknock gasoline additives, among other things, to cease announcing price changes in advance of the period contractually required for advance notice to customers, and using a "most-favored-nation" clause in any contract for the sale or delivery of lead-based antiknock compounds. Further, when stating a delivered price for any lead-based antiknock compound, the companies must also quote the product's point of origin price, a separate price for shipment, and allow customers to arrange for their own shipping and delivery. While the order does not prohibit the companies when acting individually from selecting their own customers, establishing their own prices, and selling at a delivered price or point of origin in good faith to meet the equally low price of a competitor, it does not exempt the companies' pricing practices from antitrust law.

Appearances

For the Commission: *Robert A. Burka, Edward T. Colbert, Thomas J. Keary, Stephen C. Palmer, Peter M. Kazon and Raymond T. Diamond.*

For the respondents: *Daniel K. Mayers, John H. Harwood, David Westin and Kathleen M. Russo, Wilmer, Cutler & Pickering, Washington, D.C., for Ethyl Corporation. Daniel M. Gribbon, Allan J. Topol, Terry Coleman and Edward R. Mackiewicz, Covington & Burling, Washington, D.C. and W.E. MacIntyre, in-house counsel, for E.I. du Pont de Nemours and Co. Alan S. Ward, Shirley Z. Johnson, Thomas J. Segal and Phillip A. Proger, Baker & Hostetler, Washington, D.C., Louis R. Sernoff and Michael Kelly, Morgan, Lewis & Bockius, Washington, D.C. and John W. Thomas, in-house counsel, for PPG Industries, Inc. Champ W. Davis and David C. Bogan, Chadwell, Kayser, Ruggles, McGee & Hastings, Chicago, Ill. and James S. Lambe, in-house counsel, for Nalco Chemical Co.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents, each subject to the jurisdiction of the Commission, have violated and are now violating Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that a proceed-

ing by it in respect thereof is in the public interest, hereby issues its complaint charging as follows:

Definition

1. For the purpose of this complaint the following definition shall apply:

Leadbased antiknock compounds mean additives to gasoline which increase its octane rating and which contain tetraethyl or tetramethyl lead.

ETHYL CORPORATION

2. Respondent Ethyl Corporation ("Ethyl") is a corporation organized under the laws of the Commonwealth of Virginia, with its principal place of business at 330 South Fourth Street, Richmond, Virginia. In 1977, its sales were in excess of \$1.2 billion, assets were over \$974 million, and net income was approximately \$78 million.

3. Ethyl is a manufacturer and seller of leadbased antiknock compounds in the United States with production [2] facilities in Baton Rouge, Louisiana and Pasadena, Texas. Its gross sales of leadbased antiknock compounds in 1977 were in excess of \$200 million, or more than 30% of domestic United States leadbased antiknock compound sales.

E.I. DU PONT DE NEMOURS AND COMPANY

4. Respondent E.I. du Pont de Nemours and Company ("Du Pont") is a corporation organized under the laws of the State of Delaware with its principal place of business at 1007 Market Street, Wilmington, Delaware. In 1977, its sales were in excess of \$9.4 billion, assets were over \$7.4 billion, and net income was approximately \$545 million.

5. Du Pont is a manufacturer and seller of leadbased antiknock compounds in the United States with production facilities in Deepwater, New Jersey and Antioch, California and a blending facility in Houston, Texas. Its gross sales of leadbased antiknock compounds in 1977 were in excess of \$200 million, or more than 30% of domestic United States leadbased antiknock compound sales.

PPG INDUSTRIES, INC.

6. Respondent PPG Industries, Inc. ("PPG") is a corporation organized under the laws of the Commonwealth of Pennsylvania with its principal place of business at One Gateway Center, Pittsburgh, Pennsylvania. In 1977, its sales were in excess of \$2.5 billion, assets were over \$2.1 billion, and net income was approximately \$91 million.

7. PPG is a manufacturer and seller of leadbased antiknock compounds in the United States with a production facility located in Beaumont, Texas. Its gross sales of leadbased antiknock compounds in 1977 were in excess of \$75 million, or more than 10% of the domestic United States leadbased antiknock compound sales.

NALCO CHEMICAL COMPANY

8. Respondent Nalco Chemical Company ("Nalco") is a corporation organized under the laws of the State of Delaware with its principal place of business at 2901 Butterfield Road, Oak Brook, Illinois. In 1977, its sales were in excess of \$445 million, assets were over \$285 million, and net income was approximately \$50 million. [3]

9. Nalco is a manufacturer and seller of leadbased antiknock compounds in the United States with a production facility in Freeport, Texas. Its gross sales of leadbased antiknock compounds in 1977 were in excess of \$75 million, or more than 10% of domestic United States leadbased antiknock compound sales.

LEADBASED ANTIKNOCK COMPOUND MARKET

10. The leadbased antiknock compounds produced by each respondent are substantially identical. The four respondents are the only firms which sell leadbased antiknock compounds in the United States. There has been no entry into the market for over 15 years, and during much of the period from at least 1974 to the present, the industry has operated at substantially less than capacity.

JURISDICTION

11. Leadbased antiknock compounds are sold and shipped by respondents from their principal places of business and production facilities to customers located throughout the United States. In the course and conduct of such sales, respondents have engaged in the acts and practices hereinbelow alleged in or affecting such commerce within the meaning of Section Four of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

ACTS AND PRACTICES

12. In the course of their leadbased antiknock compound businesses, respondents have engaged and continue to engage in the following acts, practices, and methods of competition, among others:

(a) Each respondent has quoted and sold leadbased antiknock compounds only on the basis of a delivered price inclusive of transportation;

(b) Respondents Ethyl and Du Pont have utilized a "most favored

nation" clause in their standard form sales contracts which promises that the buyer will receive the lowest price at which the same product is sold to any other customer, and have followed a policy of granting such treatment when sales are on a spot basis and not pursuant to an existing contract. Respondent Nalco has used a "most favored nation" clause in a substantial number of its sales contracts; [4]

(c) Each respondent (i) has utilized a 30-day advance notice of price change clause in sales contracts, and (ii) has frequently given advance notice of price changes to the press, directly or indirectly to other respondents, and to existing and potential customers in excess of 30 days.

EFFECT AND VIOLATION

13. The acts, practices, and methods of competition of respondents as hereinabove alleged have individually and in combination had the effect of reducing uncertainty about competitors' prices of leadbased antiknock compounds. Such reduced uncertainty has unfairly facilitated the maintenance of substantially uniform price levels and the reduction or elimination of price competition in the leadbased antiknock compound market.

14. The aforesaid acts, practices, and methods of competition of the respondents, individually and in combination, constitute unfair methods of competition in or affecting commerce and unfair acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.