

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,
Plaintiff,

v.

PENN-OLIN CHEMICAL COMPANY,
OLIN MATHIESON CHEMICAL CORPORATION, and
PENNSALT CHEMICALS CORPORATION,
Defendants.

CIVIL ACTION

No. 2282

Filed: January 6, 1961

C O M P L A I N T

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 against the defendants named herein, and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted against the defendants under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, as amended, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," 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 said Act, and under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, in order to prevent and restrain the continuing violation by the defendants, as hereinafter alleged, of Section 1 of said Act.

2. The defendant Penn-Olin Chemical Company may be found within the District of Delaware.

II.

DEFENDANTS

3. Penn-Olin Chemical Company, hereinafter referred to as Penn-Olin, is named a defendant herein. Penn-Olin is a corporation organized and existing under the laws of the State of Delaware and has its principal office in Wilmington, Delaware.

4. Pennsalt Chemicals Corporation, hereinafter referred to as Pennsalt, is named a defendant herein. Pennsalt is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania and has its principal office in Philadelphia, Pennsylvania.

5. Olin Mathieson Chemical Corporation, hereinafter referred to as Olin Mathieson, is named a defendant herein. Olin Mathieson is a corporation organized and existing under the laws of the Commonwealth of Virginia and has its principal office in New York, New York.

III.

TRADE AND COMMERCE

6. Olin Mathieson, a leading producer of chemicals and other products, is among the forty-one largest industrial corporations in terms of assets and the sixty largest industrial corporations in terms of sales in the United States. In 1959 it had assets approximating \$839,000,000 and sales in excess of \$700,000,000. Thirty-one percent of these sales, or about \$218,000,000 were accounted for by Olin Mathieson's Chemicals Division. The plants in which Olin Mathieson produces its large variety of chemicals and chemical products are located in at least 22 states. Raw materials and ingredients destined for these plants, as well as the products which emanate from them, are purchased, distributed or sold in interstate commerce.

7. Pennsalt is one of the larger chemical companies in the United States. In 1959 it had assets in excess of \$90,000,000 and sales of about \$87,500,000. It manufactures close to 400 chemicals or chemical products for sale throughout the United States. Its plants are located in Alabama, California, Georgia, Illinois, Kentucky, Michigan, Ohio, Oregon, Pennsylvania, Texas and Washington. Raw materials and ingredients destined for these plants, as well as the products which emanate from them, are purchased, distributed or sold in interstate commerce.

8. Olin Mathieson and Pennsalt compete in the production and sale of at least seven important chemicals: ammonia, calcium hypochlorite, caustic soda, chlorine, hydrofluoric acid, muriatic acid and sulfuric acid. In 1958 out of approximately \$600,000,000 in sales of these chemicals throughout the United States, the combined sales of Olin Mathieson and Pennsalt exceeded \$80,000,000 or 13%. Olin Mathieson's volume is greater than Pennsalt's on some of the competitive products and less on others. In 1959, Olin Mathieson's sales of these products approximated \$60,000,000 while Pennsalt's were about \$30,000,000.

9. Pennsalt produces, and both it and Olin Mathieson sell sodium chlorate, a chemical widely used for industrial, agricultural and defense purposes. Sodium chlorate, produced by the electrolysis of an acidified salt solution, is distributed and sold through channels of interstate commerce throughout the United States. The largest consumer of sodium chlorate is the pulp and paper industry which uses it increasingly in the bleaching of pulp for brighter, higher quality paper. For this purpose, almost 40% of the sodium chlorate produced in the United States is consumed in the generation of chlorine dioxide, a gas which possesses the unique ability to bleach cellulosic fibers to maximum whiteness with little

or no loss of fiber strength. Large quantities of sodium chlorate also go into the manufacture of herbicides, the preparation of agents for the defoliation of cotton and soybeans, and the production of other important chlorates and perchlorates. The latter groups include potassium chlorate, a standard ingredient in the manufacture of matches, and ammonium perchlorate, an important chemical used as an oxidizer in solid propellant fuels for rockets and missiles. The rapidly increasing demand for ammonium perchlorate has made its production the second most significant use of sodium chlorate and is widely believed to offer the greatest growth potential for sodium chlorate consumption.

10. The sodium chlorate industry is highly concentrated: American Potash and Chemical Corporation, with plants in Nevada and Mississippi, Hooker Chemical Corporation, with plants in Mississippi and at Niagara Falls, New York, and Pennsalt with a plant at Portland, Oregon, presently account for virtually all of the sodium chlorate produced in the United States. The same three producers, or companies owned by them, also account for all of the potassium chlorate and virtually all of the ammonium perchlorate produced here. In 1959, Pennsalt accounted for about 14% of the 88,300 tons of sodium chlorate, valued at approximately \$14,500,000, produced in the United States. In 1960, as a result of the expansion of its Portland plant, Pennsalt's production has risen to approximately 18% of the country's total. Pennsalt's sales of sodium chlorate currently exceed 14,000 tons or \$2,000,000 annually. The balance of its output is consumed in the manufacture of other products.

11. Olin Mathieson is Pennsalt's leading customer for sodium chlorate, currently buying at a rate exceeding 3,000 tons per year. Its purchases represented about 11% of Pennsalt's sodium chlorate sales in 1958, 12% in 1959 and 21% in the first six months of 1960. All of the Pennsalt sodium chlorate bought by

Olin Mathieson is resold to others. In addition, Olin Mathieson has been a substantial customer for sodium chlorate produced by Hooker Chemical Corporation. Olin Mathieson presently purchases, for use or resale, over 6% of all the sodium chlorate sold in the United States.

12. Olin Mathieson also occupies a leading position in the technology of sodium chlorate applications. Apart from research and production activities in solid propellant rocket fuels and the ownership of patents relating to the production of perchlorates, Olin Mathieson owns the patented Mathieson process, the most widely used system in the United States for generating chlorine dioxide from sodium chlorate for pulp and paper bleaching purposes. As of February 1960, Olin Mathieson's process was reported as being used in more than 20 of about 55 chlorine dioxide generation plants in North America.

13. On February 11, 1960, Olin Mathieson and Fennsalt entered into a joint venture agreement providing for the creation of Penn-Olin Chemical Company. The agreement provides that (a) each of the joint venturers is to own 50% of the stock of Penn-Olin; (b) Penn-Olin is to construct a plant at Calvert City, Kentucky, with a capacity of 25,000 tons of sodium chlorate per year, expected to cost approximately \$6,500,000, and to be located on land deeded by, and adjacent to existing facilities of Fennsalt; (c) Olin Mathieson will act as sales agent for Penn-Olin; and (d) Fennsalt and Olin Mathieson will disclose to Penn-Olin all technical and operating information relating to the operations or contemplated operations of Penn-Olin which either party possesses or may develop prior to December 31, 1964.

14. On February 25, 1960, Penn-Olin Chemical Company was incorporated under the laws of the State of Delaware. Penn-Olin is authorized to engage in the production, distribution and sale of chemicals and chemical compositions of any state, form, nature, mixture or description, including sodium chlorate, potassium chlorate and perchlorates. The raw materials for Penn-Olin's production are found

in large part outside Kentucky, and Penn-Olin's chemical products are destined for distribution and sale to customers located in various states of the United States.

15. Subsequent to the formation of Penn-Olin, the stock of the corporation, totalling 2,000 shares designated as common stock, was issued in equal shares to Pennsalt and Olin Mathieson. In addition, officers and directors of Penn-Olin have been appointed from among the personnel of Pennsalt and Olin Mathieson. Among such officers and directors are the General Manager of the Industrial Chemicals Division of Pennsalt, appointed to serve also as President and a director of Penn-Olin; and the Vice President and Associate General Manager of the Chemicals Division of Olin Mathieson, appointed to serve also as Vice President and a director of Penn-Olin.

IV

OFFENSES CHARGED

16. The effect of the concurrent acquisitions of part of the stock of Penn-Olin by Pennsalt and Olin Mathieson may be substantially to lessen competition or to tend to create a monopoly in the production and sale throughout the United States or certain sections thereof of sodium chlorate and of such other chemical products sold in commerce as are or may be manufactured by either defendant, in violation of Section 7 of the Clayton Act, as more fully described in paragraph 18.

17. The contract by which Pennsalt and Olin Mathieson undertook to establish Penn-Olin, and the combination in which defendants have pooled their respective resources, as described in paragraphs 13 through 15, are in unreasonable restraint of trade and commerce in the production and sale of sodium chlorate and of other chemicals or chemical products produced by either defendant, in violation of Section 1 of the Sherman Act.

V

EFFECTS OF VIOLATIONS

18. The foregoing violations have had and may have the following effects, among others:

- (a) Potential competition between Olin Mathieson and Pennsalt in the production of sodium chlorate has been eliminated;
- (b) Actual and potential competition between Olin Mathieson and Pennsalt in the sale of sodium chlorate has been eliminated;
- (c) Competition generally in the production and sale of sodium chlorate may be substantially lessened;
- (d) Concentration in the sodium chlorate industry, and in the allied fields of chlorate and perchlorate chemicals, will be preserved and barriers to the entry of newcomers will be enhanced;
- (e) Olin Mathieson will be eliminated as an independent customer for sodium chlorate manufactured by competitors of Pennsalt;
- (f) Actual and potential competition between Olin Mathieson and Pennsalt in the production and sale of various chemicals and chemical products may be substantially lessened;
- (g) Suppliers of Olin Mathieson and Pennsalt may be placed at a competitive disadvantage in attempting to furnish raw materials or ingredients which either Pennsalt or Olin Mathieson can sell to the other;
- (h) Consumers will be denied the benefits of free and unrestricted competition in the production and sale of chemicals and chemical products generally;
- (i) Competitors in the chemical industry and in other industries may be encouraged to participate in joint ventures as a means of avoiding, lessening, restraining or suppressing competition inter sese.

19. The violations alleged in the foregoing paragraphs, as well as the effects of those violations, are continuing and will continue

unless the relief prayed for in this complaint is granted.

PRAYER

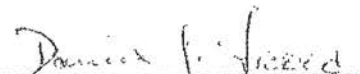
WHEREFORE, plaintiff prays:

1. That Olin Mathieson, Pennsalt and Penn-Olin be adjudged to have violated Section 7 of the Clayton Act.
2. That Olin Mathieson, Pennsalt and Penn-Olin be adjudged to have violated Section 1 of the Sherman Act.
3. That the contract, combination and joint venture of Pennsalt and Olin Mathieson be dissolved under such terms and conditions as the Court may direct.
4. That defendants and all persons acting on their behalf be enjoined and restrained from taking any action in furtherance of the joint venture or the agreement of February 11, 1960.
5. That Pennsalt and Olin Mathieson, and all persons acting on their behalf, be enjoined and restrained from entering into or continuing any joint venture agreement, arrangement or understanding with each other, except with the approval of the Court.
6. That a preliminary injunction issue against defendants, their representatives and agents, to prevent and restrain them from proceeding jointly with the construction or operation of Penn-Olin's plant and facilities, or with the carrying out of any other provisions of their agreement, pending final adjudication of the merits of this complaint.
7. That pursuant to Sections 12 and 15 of the Clayton Act orders be made and entered requiring Olin Mathieson and Pennsalt to be brought before the Court in this proceeding and directing the Marshals of the Southern District of New York and the Eastern District of Pennsylvania respectively to serve summons upon those defendants.

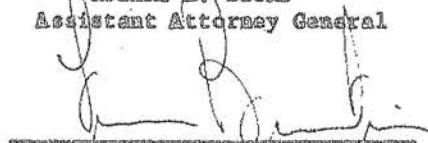
8. That the plaintiff have such other and further relief as this Court may deem just and proper.

9. That the plaintiff recover the costs of this suit.


WILLIAM P. ROGERS
Attorney General


DANIEL J. FREED
Attorney, Department of Justice


ROBERT A. BICKS
Assistant Attorney General


LEWIS BERNSTEIN
Attorney, Department of Justice


LEONARD G. HAGNER
United States Attorney