

## IN THE MATTER OF

## SHELL OIL COMPANY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE  
FEDERAL TRADE COMMISSION ACT

*Docket C-3803. Complaint, April 21, 1998--Decision, April 21, 1998*

This consent order requires, among other things, the two petroleum corporations to divest, to Commission-approved buyers, a package of assets, including a refinery, a terminal and certain retail gasoline stations.

*Appearances*

For the Commission: *Richard Liebeskind, Frank Lipson, Arthur Nolan, Phillip Broyles and William Baer.*

For the respondents: *Steven Newborn, Rogers & Wells, Washington, D.C. and Marc Schildkraut and Tim Boyle, Howrey & Simon, Washington, D.C.*

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that respondent Shell Oil Co. ("Shell"), a corporation, and respondent Texaco Inc. ("Texaco"), a corporation, both subject to the jurisdiction of the Commission, have entered into an agreement or agreements (or may enter into an agreement or agreements), with themselves and with others, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, to form a limited liability corporation ("LLC") or LLCs and to transfer to said LLCs the corporations, businesses, and assets that constitute the principal part of the petroleum refining and marketing businesses of Shell, Texaco, and their affiliates in the United States, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

## SHELL OIL COMPANY

1. Respondent Shell Oil Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of

Delaware, with its office and principal place of business located at One Shell Plaza, Houston, Texas.

2. Respondent Shell is, and at all times relevant herein has been, engaged in the business of refining, transporting, and marketing petroleum products, including gasoline, diesel fuel, jet fuel, and asphalt, in the United States. Among other places, Shell has refined or marketed petroleum products in the States of Alabama, Arizona, California, Georgia, Hawaii, Louisiana, Mississippi, Nevada, North Carolina, Oregon, South Carolina, Tennessee, Texas, Virginia, and Washington and in the District of Columbia.

3. Respondent Shell is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

TEXACO INC.

4. Respondent Texaco is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 2000 Westchester Avenue, White Plains, New York.

5. Respondent Texaco is, and at all times relevant herein has been, engaged in the business of transporting crude oil and refining, transporting, and marketing petroleum products, including gasoline, diesel fuel, jet fuel, and asphalt, in the United States. Texaco and Saudi Refining Co. ("Saudi Refining") jointly control Star Enterprises, Inc. ("Star"). Star is, and at all times relevant herein has been, engaged in the business of refining and marketing petroleum products, including gasoline, diesel fuel, jet fuel, and asphalt, in the United States. Among other places, Texaco or Star has refined or marketed petroleum products in the States of Alabama, Arizona, California, Georgia, Hawaii, Louisiana, Mississippi, Nevada, North Carolina, Oregon, South Carolina, Tennessee, Texas, Virginia, and Washington and in the District of Columbia.

6. Respondent Texaco is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

## THE JOINT VENTURES

7. In October 1996, Shell and Texaco announced that they were considering forming a joint venture or ventures to combine their "downstream," or refining, transportation, and marketing, businesses in the United States. On or about March 18, 1997, Shell and Texaco entered into a Memorandum of Understanding regarding the formation of a joint venture to be known as "Westco." Westco was to be organized as an LLC into which Shell and Texaco would contribute their refining and marketing assets located in the midwestern and western United States (roughly corresponding with Petroleum Administration for Defense Districts ("PADDs") II, IV, and V). Shell and Texaco would also contribute to Westco their pipeline interests and businesses nationwide.

8. On or about July 16, 1997, Shell, Texaco, and Saudi Refining entered into a Memorandum of Understanding regarding the formation of a joint venture to be known as "Eastco." Eastco was to be organized as an LLC into which Shell and Star would contribute their refining and marketing assets located in the Gulf Coast and eastern United States (roughly corresponding with PADDs I and III). The total value of the businesses to be contributed to both Westco and Eastco is more than \$10 billion.

9. The Westco and Eastco joint ventures, and any other combination of the petroleum refining, transportation, or marketing businesses, operations, or assets of Shell, Texaco, and Star, are referred to herein as the "Joint Venture."

## TRADE AND COMMERCE

10. The relevant lines of commerce (*i.e.*, the product markets) in which to analyze the effects of the Joint Venture are the refining, transportation, terminaling, wholesale sales, and retail sales of conventional unleaded gasoline, CARB-II gasoline ("CARB gasoline") (*i.e.*, gasoline that meets the specifications of "CARB," the California Air Resources Board), diesel fuel, kerosene jet fuel (also known as "kerojet"), and asphalt; and the transportation of undiluted heavy crude oil to the San Francisco, California, area.

11. Conventional unleaded gasoline is a motor fuel used in automobiles. Conventional unleaded gasoline is manufactured from crude oil at refineries in the United States and throughout the world. There are no substitutes for gasoline as fuel for automobiles and other vehicles that use gasoline.

12. CARB gasoline is a motor fuel used in automobiles. CARB gasoline is cleaner burning and therefore causes less air pollution than other gasolines. Beginning in June 1996, the State of California

has prohibited the sale or use of any gasoline other than CARB gasoline in that State. CARB gasoline is generally manufactured from crude oil only at refineries in California and at Shell's refinery at Anacortes, Washington. There are no substitutes for gasoline sold in California as fuel for automobiles and other vehicles that use gasoline.

13. Kerosene jet fuel is a motor fuel used in jet airplanes, and is manufactured from crude oil at refineries in the United States and throughout the world. There are no substitutes for kerosene jet fuel as fuel for jet airplanes.

14. Asphalt is a paving material made from crude oil. There are no economic substitutes for asphalt.

15. The Texaco heated pipeline is the only pipeline that supplies undiluted heavy crude oil to the San Francisco Bay area. Shell and a competitor refine asphalt in the San Francisco Bay area. For the competitor, there are no economic substitutes for undiluted heavy crude oil in refining asphalt.

16. The relevant sections of the country (*i.e.*, the geographic markets) in which to analyze the Joint Venture described herein are the following:

a. The Puget Sound area of Washington State ("Puget Sound"), *i.e.*, the cities of Seattle, Tacoma, Olympia, and Bremerton and surrounding areas, where the Joint Venture will reduce competition in the markets for conventional gasoline and kerosene jet fuel, as alleged below;

b. The Pacific Northwest, *i.e.*, the States of Washington and Oregon west of the Cascades Mountains, where the Joint Venture will reduce competition in the markets for conventional gasoline and kerosene jet fuel, as alleged below;

c. The State of California, where the Joint Venture will reduce competition in the market for CARB gasoline, as alleged below;

d. The northern portion of the State of California, *i.e.*, the State of California approximately north of Fresno, where the Joint Venture will reduce competition in the market for asphalt, as alleged below;

e. The San Francisco Bay area, where the Joint Venture will have the incentive and ability to raise the cost of undiluted heavy crude oil, as alleged below;

f. The inland portions of the States of Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, and Tennessee (*i.e.*, the portions more than 50 miles from the ports of Savannah, Charleston, Wilmington, and Norfolk) (the "inland Southeast"),

where the Joint Venture will reduce competition in the market for transportation of refined light petroleum products, as alleged below;

g. San Diego County, California, where the Joint Venture will reduce competition in the market for CARB gasoline, as alleged below; and

h. The island of Oahu, Hawaii, where the Joint Venture will reduce competition in the market for conventional gasoline and diesel fuel, as alleged below.

#### MARKET STRUCTURE

17. The refining of conventional gasoline and kerosene jet fuel for Puget Sound and the Pacific Northwest is highly concentrated, whether measured by the Herfindahl-Hirschmann Index ("HHI") or by four-firm concentration ratios. The Joint Venture would significantly increase the HHIs in each of these already highly concentrated markets.

18. The refining of CARB gasoline for California is moderately concentrated, whether measured by the HHI or by four-firm concentration ratios. The Joint Venture would significantly increase the HHIs in this already moderately concentrated market.

19. Texaco is the only entity that supplies undiluted heavy crude oil by pipeline to refiners in the San Francisco Bay area. Texaco's pipeline from the San Joaquin Valley to the San Francisco Bay area is a heated pipeline. A heated crude oil pipeline can transport heavy crude oils without diluting them with lighter petroleum materials.

20. The transportation of refined light petroleum products, including gasoline, diesel fuel, and jet fuel, to the inland Southeast is highly concentrated, whether measured by the HHI or by four-firm concentration ratios. The Joint Venture would significantly increase the risk of coordinated behavior between Colonial Pipeline Co. ("Colonial") and Plantation Pipe Line Co. ("Plantation"), as alleged below.

21. The wholesale and retail markets for CARB gasoline in San Diego County, California, are currently moderately concentrated, whether measured by the HHI or by four-firm concentration ratios. The Joint Venture would significantly increase the HHIs and result in highly concentrated markets.

22. The terminaling, wholesale, and retail markets for gasoline and diesel fuel on Oahu, Hawaii, are highly concentrated, whether measured by the HHI or by four-firm concentration ratios. The Joint Venture would significantly increase the HHIs in each of these already highly concentrated markets.

## ENTRY CONDITIONS

23. Entry into the relevant markets in the relevant sections of the country is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant sections of the country.

## FIRST VIOLATION CHARGED

24. Shell and Texaco are actual competitors in the refining of conventional gasoline and kerosene jet fuel in Puget Sound.

25. The effect of the Joint Venture, if consummated, may be substantially to lessen competition in the refining of conventional gasoline and kerosene jet fuel in Puget Sound, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

- a. By eliminating direct competition in conventional gasoline and kerosene jet fuel between refineries owned or controlled by Shell and Texaco;
- b. By increasing the likelihood that the combination of Shell and Texaco will unilaterally exercise market power; and
- c. By increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Shell and Texaco and their competitors in Puget Sound;

each of which increases the likelihood that the prices of gasoline and kerosene jet fuel will increase in Puget Sound.

## SECOND VIOLATION CHARGED

26. Shell and Texaco are actual competitors in the refining of conventional gasoline and kerosene jet fuel in the Pacific Northwest.

27. The effect of the Joint Venture, if consummated, may be substantially to lessen competition in the refining of conventional gasoline and kerosene jet fuel in the Pacific Northwest, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

- a. By eliminating direct competition in conventional gasoline and kerosene jet fuel between refineries owned or controlled by Shell and Texaco;
- b. By increasing the likelihood that the combination of Shell and Texaco will unilaterally exercise market power; and

c. By increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Shell and Texaco and their competitors in the Pacific Northwest;

each of which increases the likelihood that the prices of gasoline and kerosene jet fuel will increase in the Pacific Northwest.

#### THIRD VIOLATION CHARGED

28. Shell and Texaco are actual competitors in the refining of CARB gasoline in California.

29. The effect of the Joint Venture, if consummated, may be substantially to lessen competition in the refining of CARB gasoline in California, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

a. By eliminating direct competition in CARB gasoline between refineries owned or controlled by Shell and Texaco;

b. By increasing the likelihood that the combination of Shell and Texaco will unilaterally exercise market power; and

c. By increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Shell and Texaco and their competitors in California;

each of which increases the likelihood that the price of CARB gasoline will increase in California.

#### FOURTH VIOLATION CHARGED

30. Shell is the leading refiner of asphalt in northern California. Texaco is the only entity that supplies undiluted heavy crude oil by pipeline to the San Francisco Bay area, the location of all refineries in northern California.

31. The effect of the Joint Venture, if consummated, may be substantially to lessen competition in the refining of asphalt in northern California, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

a. By providing the combination of Shell and Texaco with the incentive and ability to raise the cost of undiluted heavy crude oil by pipeline to the competing refiner of asphalt in the San Francisco Bay area; and

b. By reducing competition between Shell and its competitors in the sales of asphalt in northern California;

each of which increases the likelihood that the price of asphalt in northern California will increase.

#### FIFTH VIOLATION CHARGED

32. Texaco owns approximately 14% of Colonial, and Shell owns approximately 24% of Plantation. Colonial and Plantation are actual competitors in the transportation of refined light petroleum products to the inland Southeast.

33. The effect of the Joint Venture, if consummated, may be substantially to lessen competition in the transportation of refined light petroleum products to the inland Southeast, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

a. By eliminating direct competition between Colonial and Plantation in the transportation of refined light petroleum products to the inland Southeast;

b. By providing Shell and Texaco with access to sensitive competitive information of both Colonial and Plantation; and

c. By increasing the likelihood of, or facilitating, collusion or coordinated interaction between Colonial and Plantation, or between the owners of each;

each of which increases the likelihood that the prices of refined light petroleum products (including gasoline, diesel fuel, and kerosene jet fuel) will increase in the inland Southeast.

#### SIXTH VIOLATION CHARGED

34. Shell and Texaco are actual competitors in the wholesale and retail sales of CARB gasoline in San Diego County, California.

35. The effect of the Joint Venture, if consummated, may be substantially to lessen competition in the wholesale and retail sales of CARB gasoline in San Diego County, California, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

a. By eliminating direct competition in the wholesale and retail sales of CARB gasoline; and



b. By increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Shell and Texaco and their competitors in San Diego County, California;

each of which increases the likelihood that the price of CARB gasoline will increase in San Diego County, California.

#### SEVENTH VIOLATION CHARGED

36. Shell and Texaco are actual competitors in the terminaling and wholesale and retail sales of gasoline and diesel fuel on Oahu, Hawaii.

37. The effect of the Joint Venture, if consummated, may be substantially to lessen competition in the terminaling and wholesale and retail sales of gasoline and diesel fuel on Oahu, Hawaii, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

a. By eliminating direct competition in the terminaling and wholesale and retail sales of gasoline and diesel fuel; and

b. By increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combination of Shell and Texaco and their competitors on Oahu, Hawaii;

each of which increases the likelihood that the prices of gasoline and diesel fuel will increase on Oahu, Hawaii.

#### STATUTES VIOLATED

38. The proposed Joint Venture between Shell and Texaco violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and would, if consummated, violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.