

OCCIDENTAL PETROLEUM CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7
OF THE CLAYTON ACT

Docket C-1749. Complaint, June 3, 1970—Decision, June 3, 1970

Consent order requiring a Los Angeles, Calif., manufacturer of metal finishing products and its subsidiary, a major producer of industrial chemicals and plastics with headquarters in New York City, to cease refusing to sell, service or guarantee products and/or equipment unless the purchaser also buys or uses other such products and/or equipment, selling a combined quantity of products at a lower unit price than an equivalent total quantity sold singly, unless the difference can be cost justified, distributing its products on an exclusive basis for the next 10 years, acquiring any manufacturer or distributor in the metal finishing industry for 10 years without the prior approval of the Federal Trade Commission, rationing supplies to customers unfairly or inequitably; the order also requires respondents to grant to responsible applicants licenses, for reasonable royalties, to all previously developed processes for preparing plastics for plating, and to make available each year a domestic price list for each of their standard metal finishing products, equipment and services, when the services are separable, and distribute it to any United States customer upon request.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents have violated the provisions of Section 7 of

the Clayton Act, as amended (15 U.S.C. Sec. 18) issues this complaint pursuant to Section 11 of the Clayton Act (15 U.S.C. Sec. 21), stating its charges as follows:

I. THE RESPONDENTS

A. Occidental Petroleum Corporation

1. Respondent, Occidental Petroleum Corporation ("Occidental"), is a corporation organized and existing under the laws of the State of California, with its office and principal place of business at 10889 Wilshire Boulevard, Los Angeles, California.

2. In 1967 Occidental had sales of \$826 million and assets of \$779 million as of December 31, 1967. Occidental, in 1967, was the 102nd largest industrial corporation in the United States in terms of sales and the 96th largest in terms of assets.

3. Prior to its acquisition of Hooker Chemical Corporation ("Hooker"), Occidental was principally engaged in the exploration for and development of natural resources, including oil, gas, coal, sulfur and phosphate rock, the marketing and transportation of crude oil, and the manufacture and sale of fertilizers and other agricultural chemicals.

4. On March 21, 1968, directors of Occidental and Hooker agreed in principle on the acquisition of Hooker by Occidental; a definitive agreement was reached on May 7, 1968. That agreement was approved by the stockholders of both companies on July 18, 1968. The acquisition was consummated on July 24, 1968.

5. In 1968, after its acquisition of Hooker, Occidental had consolidated sales of \$1,807 million and total assets of \$1,788 million as of December 31, 1968. Occidental, in 1968, was the 48th largest industrial corporation in the United States in terms of sales and the 41st largest in terms of assets.

6. Through Hooker, Occidental is a leading manufacturer and seller of a number of metal finishing products including phosphate conversion coatings, vapor degreasing materials and sodium hypophosphite, a chemical required for electroless plating, and has substantial sales of a number of other metal finishing products. Such products are used by electroplaters as well as other metal finishers.

7. At all times relevant herein, Occidental has sold and shipped products in interstate commerce throughout the United States and engaged in "commerce" within the meaning of the Clayton Act.

B. Hooker Chemical Corporation

8. Respondent Hooker is a corporation organized and existing under the laws of the State of New York, with its office and principal

place of business located at 277 Park Avenue, New York, New York.

9. Hooker, in 1967, was approximately the 244th largest industrial corporation in the United States in terms of sales and approximately the 191st largest in terms of assets. Its total sales during 1967 were \$364.5 million, while its total assets amounted to \$366 million.

10. At the time of its acquisition by Occidental, Hooker was a major diversified producer of industrial chemicals, farm chemicals, and plastics. For the fiscal period ending December 31, 1967, approximately 21 percent of Hooker's consolidated sales were accounted for by metal finishing chemicals, 19 percent by farm chemicals, 10 percent by pulp and paper chemicals, 7 percent by detergent and dry cleaning chemicals, 15 percent by chemicals and specialties for other industrial uses, 20 percent by plastics, and 8 percent by international sales.

11. In 1962, Hooker acquired Parker Rust Proof Company, a leading manufacturer and supplier of phosphate conversion coatings and other products for metal finishing.

12. At all times relevant herein, Hooker has sold and shipped products in interstate commerce throughout the United States and engaged in "commerce" within the meaning of the Clayton Act.

II. THE ACQUIRED COMPANIES

A. *The Udylite Corporation*

13. The Udylite Corporation ("Udylite"), is a corporation organized and existing under the laws of the State of Michigan with its office and principal place of business located at 21441 Hoover Road, Warren, Michigan.

14. At the time of the acquisition described in Paragraph 40, herein, Udylite was the largest supplier of metal finishing products, equipment and services to electroplaters in the United States. Udylite was the largest manufacturer and seller of non-precious metal electroplating products and equipment. In addition to electroplating products and equipment, Udylite also manufactured and sold other metal finishing supplies. Udylite provided extensive analytical and testing service, equipment design and repair, and other technical service and advice to its customers.

15. Udylite also manufactured and sold foundry facings of various kinds used in the production of metal castings and distributed foundry supplies, machinery and equipment.

16. At the time of the acquisition described in Paragraph 40, herein, Udylite was a large distributor of nickel and received large

allocations of nickel, in the form of soluble nickel anodes, for resale to electroplaters. At that time and subsequent thereto, nickel was and has been in extremely short supply.

17. Udyllite directly, or indirectly through subsidiaries and licensees, manufactured and distributed metal finishing materials and equipment in numerous foreign countries.

18. In 1966, Udyllite had sales of approximately \$71 million and total assets at the end of that year of \$32.3 million. In 1967, Udyllite's sales amounted to approximately \$62.5 million.

19. At all times relevant herein, Udyllite has sold and shipped products in interstate commerce throughout the United States and engaged in "commerce" within the meaning of the Clayton Act.

B. Sel-Rex Corporation

20. Sel-Rex Corporation ("Sel-Rex"), is a corporation organized and existing under the laws of the State of Delaware with its office and principal place of business located at 75 River Road, Nutley, New Jersey.

21. At the time of the acquisition described in Paragraph 41, herein, Sel-Rex was the largest supplier of metal finishing products, equipment and services to precious metal electroplaters in the United States. Sel-Rex provided extensive analytical and testing services, equipment design and repair, and other technical services and advice to its customers.

22. Sel-Rex directly, or indirectly through subsidiaries and licensees, manufactured and distributed precious metal products and equipment in numerous foreign countries.

23. In 1967, Sel-Rex had sales of \$33.4 million and total assets at the end of that year of about \$13.5 million.

24. At all times relevant herein, Sel-Rex has sold and shipped products in interstate commerce throughout the United States and engaged in "commerce" within the meaning of the Clayton Act.

III. TRADE AND COMMERCE

A. Metal Finishing

25. Metal finishing consists of all procedures and processes for treating and improving metal surfaces, which are electroplating, electroless plating, preparation of plastics for plating, phosphating, conversion coatings, protective oils, electropainting, metal and paint stripping, etchants, bright dips, electropolishing, and pretreatments

and aftertreatments in connection with any of the foregoing, including cleaning, pickling and vapor degreasing.

26. The manufacture, sale and distribution of metal finishing products and equipment is a large and substantial industry. The sale of metal finishing products and equipment in the United States amounts to more than \$1 billion annually. Such sales are made by manufacturers directly and through distributors to metal finishing job shops and to companies engaged in manufacturing or assembling metal products which require metal finishing.

27. Prior to the acquisition of Udyllite and Sel-Rex by Hooker, as described in Paragraphs 40 and 41 herein, suppliers to the metal finishing industry consisted of many limited-line manufacturers offering products and/or equipment to metal finishers relating to one or only a few types of metal finishing processes. In several cases, the manufacture and sale of products and/or equipment for use in conjunction with a given process was dominated by one or a few companies, among them Hooker, Udyllite and Sel-Rex, as described in Paragraphs 6, 14 and 21, herein. However, no manufacturer offered a full line of products and equipment for a broad range of metal finishing processes. Subsequent to these acquisitions, Occidental, directly or through Hooker, has dominated the metal finishing industry by its possession of the combined specialties, and dominant positions within such specialties, of Udyllite, Sel-Rex and Hooker, and by the combined manufacturing, marketing, research and financial strengths of Udyllite, Sel-Rex and Hooker.

28. Many metal finishing products and equipment are owned or controlled as a result of a combination of patents, trade secrets and/or other proprietary rights. The nature and extent of a metal finishing supplier's proprietary position may constitute an important factor in selling non-proprietary as well as proprietary products and equipment. Prior to the acquisition of Udyllite and Sel-Rex, as described in Paragraphs 40 and 41 herein, no one company possessed a significant proprietary position extending over a broad range of metal finishing products and services. Subsequent to these acquisitions, Occidental, directly or through Hooker, has possessed a significant proprietary position in a broad range of metal finishing products and equipment, through the combination of the patents, trade secrets and other proprietary rights of Udyllite, Sel-Rex and Hooker.

B. Electroplating

29. The primary function of electroplating is to impart corrosion resistance and brightness to metal and plastic surfaces. Certain other

qualities such as durability, hardness, and heat and stain resistance may also be stressed in electroplating, depending on the physical properties of the plated article and on customer requirements. In most applications, customer requirements are such that alternative metal finishing techniques are unacceptable. However, many electroplaters provide other metal finishing services, such as anodizing, application of conversion coatings, electropolishing, buffing, etc.

30. Electroplaters are divisible into two categories: non-precious metal electroplaters, who perform nickel, copper, cadmium, chromium and other non-precious metal electroplating services; and precious metal electroplaters, who perform precious metal electroplating services. Precious metal electroplaters generally apply non-precious metal undercoatings to all articles before finishing the surface with a precious metal electroplate.

31. Electroplaters purchase approximately \$350 million in metal finishing products and equipment annually, of which non-precious metal electroplaters purchase approximately \$250 million and precious metal electroplaters purchase approximately \$100 million. The industry is comprised of several thousand independent job shops and numerous "captive" shops in various types of fabricating and assembly plants.

32. Electroplating is a complex art, the practice of which necessitates close cooperation between the electroplater and his metal finishing suppliers in such matters as design of processes, control and testing of pre-plating and plating baths, design and application of proper cleaners and pre-finishing materials, testing and analysis of plated samples, and design, maintenance and repair of proper equipment.

33. Most electroplaters are heavily dependent on their suppliers of metal finishing products and equipment for technical service and advice. In time of short supply of nickel or cadmium, the metal generally is rationed by the metal producers. At least since 1967, nickel and cadmium have been in short supply and one or both metals have been rationed by the metal producers. Since some metal finishing suppliers are allocated the scarce metal in anode form, many electroplaters may be dependent upon such suppliers for a continuing supply of such anodes.

34. The heavy dependence of the electroplater on his suppliers of metal finishing products and equipment tends to enable a large full-line supplier to influence, persuade, or compel electroplaters to purchase all products in the supplier's line and to refrain from purchas-

ing competing lines. This tendency manifests itself especially where such a supplier is a source of a metal in short supply.

C. Preparing Plastics For Plating

35. In the past several years, plating on plastics has become commercially feasible, as new techniques of a proprietary nature have been developed for preparing plastic surfaces for electroplating. It is likely that the use of plated plastics will grow at a great rate within the next several years.

36. At the time of the acquisitions described in Paragraphs 40 and 41, herein, only a small number of processes for pre-plating plastics had been proved commercially feasible.

37. Shortly before the acquisitions described in Paragraphs 40 and 41, herein, Hooker had developed a short-cut process for preparing plastics for plating.

38. In the period immediately preceding the acquisition described in Paragraph 40, herein, Udyllite was conducting plating on plastics research. Udyllite was also distributing proprietary pre-plating plastics solutions produced by one of the few companies in the field.

39. Shortly before the acquisition described in Paragraph 41, herein, Sel-Rex proposed to begin, or began, distribution of solutions for pre-plating plastics materials, employing a proprietary process owned by a foreign company.

IV. THE ACQUISITIONS

A. Udyllite

40. On November 6, 1967, directors of Hooker and Udyllite reached a definitive agreement on the acquisition of Udyllite by Hooker. The agreement was approved by the stockholders of both companies on December 21, 1967. The acquisition was consummated on January 2, 1968, with Udyllite transferring to Hooker substantially all of its assets and liabilities in exchange for shares of Hooker common and preferred stock with an aggregate value of approximately \$41 million.

B. Sel-Rex

41. On April 4, 1968, directors of Hooker and Sel-Rex reached a definitive agreement on the acquisition of Sel-Rex by Hooker. The agreement was approved by the stockholders of both companies on July 18, 1968. The acquisition was consummated on July 24, 1968, with Sel-Rex transferring to Hooker substantially all of its assets

and liabilities in exchange for shares of Hooker common and preferred stock with an aggregate value of approximately \$45 million. The acquisition of Sel-Rex by Hooker and the acquisition of Hooker by Occidental occurred on the same day.

V. VIOLATIONS CHARGED

42. The effect of the acquisition of Udyllite, and the effect of the acquisition of Sel-Rex, has been, or may be, substantially to lessen competition or to tend to create a monopoly in the manufacture and/or sale of metal finishing products, equipment and services, and in the manufacture and/or sale of various categories thereof, in the United States, in the following ways, among others:

(a) Actual and potential competition between Hooker and Udyllite and between Hooker and Sel-Rex has been eliminated;

(b) The substitution of Occidental and Hooker, with their multi-divisional manufacturing, marketing, research and financial strengths, tends unduly to increase barriers to entry of new competition and to deprive smaller limited-line rivals of an equal opportunity to compete, cumulatively entrenching Occidental and Hooker in their acquired dominant position;

(c) Leading suppliers of electroplating products, equipment and services have been absorbed into and combined with one of the largest industrial corporations in the United States which occupies a leading position in the production and sale of closely related metal finishing products;

(d) Concentration may be substantially increased and the possibility of deconcentration lessened;

(e) Udyllite and Sel-Rex have been eliminated as independent competitive factors;

(f) Occidental and Hooker have obtained a substantial competitive advantage over smaller limited-line competitors;

(g) Other suppliers of metal finishing products and equipment may combine by acquisition or merger in order to obtain the types of capabilities obtained by Occidental and Hooker by virtue of the acquisition;

(h) Occidental and Hooker have obtained the opportunity to influence, persuade or compel metal finishers to purchase most or all of their requirements from Occidental and Hooker or to refrain from purchasing competing lines.

43. The acquisition of Udyllite, as alleged in Paragraph 42, above, constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Sec. 18).

44. The acquisition of Sel-Rex, as alleged in Paragraph 42, above, constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Sec. 18).

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the acquisitions of The Udyllite Corporation, a corporation, hereinafter sometimes referred to as Ulylite, and Sel-Rex Corporation, a corporation, hereinafter sometimes referred to as Sel-Rex, by respondents named in the caption above, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Restraint of Trade proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of Section 7 of the Clayton Act, as amended; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that the respondents have violated Section 7 of the Clayton Act, as amended, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, and having received no comments from interested members of the public, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Proposed respondent Occidental Petroleum Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 10889 Wilshire Boulevard, Los Angeles, California.

Proposed respondent Hooker Chemical Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of

business located at 277 Park Avenue, New York, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I

It is ordered, That respondent, Occidental Petroleum Corporation ("Occidental"), and respondent, Hooker Chemical Corporation ("Hooker"), and their officers, directors, agents, representatives, employees, subsidiaries, affiliates, successors, and assigns, in connection with the sale or distribution in the United States of metal finishing products or equipment sold by them in the United States, forthwith cease and desist from:

(1) Selling any such product or equipment on the condition, agreement or understanding, express or implied, that the purchaser will buy any other such product or equipment;

(2) Refusing to sell any such products and/or equipment unless the purchaser purchases or agrees to purchase other such products and/or equipment;

(3) Refusing to service or guarantee any such product or equipment unless the purchaser purchases or uses other such products and/or equipment;

(4) Offering and/or selling any such products and/or equipment in a combined quantity at lower unit prices than an equivalent total quantity of any of the products and/or equipment offered and/or sold singly, unless such difference in price can be cost justified by respondents;

(5) Acting as a distributor of any such products and/or equipment except on a non-exclusive basis for a period of ten (10) years from the effective date of this order.

II

It is further ordered, That respondents, Occidental and Hooker, and their subsidiaries, for a period of ten (10) years from the effective date of this order, shall cease and desist from acquiring, directly or indirectly, without the prior approval of the Federal Trade Commission, the whole or any part of the stock, share capital or assets of any concern, corporate or noncorporate, manufacturing, marketing, distributing or selling any product or equipment for or to the metal finishing industry in the United States where the proposed acquisi-

tion includes assets used in any such activity in the United States: *Provided*, That, where the proposed acquisition is of non-metal finishing assets from any concern, corporate or noncorporate, manufacturing, marketing, distributing or selling any product or equipment for or to the metal finishing industry in the United States, Occidental shall notify the Federal Trade Commission of the proposed acquisition no less than sixty (60) days prior to consummation when the time schedule permits, but if the time schedule does not permit such notice, then notification shall be given as promptly as possible: *Provided further*, That the prior approval of or notification to the Federal Trade Commission shall not be required in connection with routine purchases in the ordinary course of business of such items as materials, supplies, equipment and machinery. Nothing in this paragraph shall be construed to sanction any acquisition not subject to prior Commission approval.

III

It is further ordered, That in the event that Occidental, Hooker or any of their subsidiaries, during a period of ten (10) years from the effective date of this order, rations any metal finishing product or equipment which it sells in the United States, it will ration such product or equipment on a fair and equitable basis in the United States giving due consideration to each customer's requirements and prior purchases of the product from Occidental, Hooker or any of their subsidiaries, and respondents must establish the fairness and equitableness of such rationing, if required to do so by the Federal Trade Commission.

IV

It is further ordered, That Occidental, Hooker and/or their subsidiaries, during a period of ten (10) years from the effective date of this order, shall grant, for reasonable royalties to all financially responsible applicants making written request therefor and not then offering their customers a competitive process (unless willing to cross-license Occidental, Hooker and/or their subsidiaries for reasonable royalties), a license for the United States to any or all processes conceived or developed by them prior to the effective date of this order for preparing plastics for plating.

V

It is further ordered, That Occidental, Hooker and/or their subsidiaries, for a period of ten (10) years from the effective date of

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this order, shall make available annually a list of prices charged in the United States for each of their standard metal finishing products, equipment and services, when such services are separable from the price of the products and/or equipment, and will distribute a copy of such list to any United States customer upon request.

VI

It is further ordered, That Occidental and Hooker shall within sixty (60) days from the date of service of this order and annually thereafter on the anniversary date of this order for a period of ten (10) years, and thereafter when requested to do so by the Federal Trade Commission, submit to the Commission a written report setting forth in detail the manner and form in which it has complied and is complying with this order.

VII

It is further ordered, That respondent Occidental shall notify the Commission at least thirty (30) days prior to any proposed change in either corporate respondent which may affect compliance obligations arising out of this order, such as dissolution, assignment or sale resulting in the emergence of a corporate successor, and that this order shall be binding on any such successor.

VIII

It is further ordered, That Occidental and Hooker shall forthwith distribute a copy of this order to each of their operating divisions, to each of their metal finishing customers in the United States, and for a period of five (5) years from the effective date of this order to each new metal finishing customer in the United States.

IN THE MATTER OF

SIEGEL TRADING COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-1750. Complaint, June 5, 1970—Decision, June 5, 1970

Consent order requiring a Chicago, Ill., seller of advisory and managed accounts services in the commodity futures market to cease exaggerating the earnings of its customers and failing to disclose the