

IN THE MATTER OF
BASS BROTHERS ENTERPRISES, INC., ET AL.

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

Docket 9178. Complaint, May 8, 1984—Decision, March 12, 1986

This consent order requires, among other things, that Ashland Oil Co., the nation's third-largest producer of carbon black, cancel the proposed sale of its carbon black assets to Bass Brothers Enterprises, Inc. Ashland is also required to obtain Commission approval before selling any of its domestic carbon black plants to a major competitor.

Appearances

For the Commission: *Steven B. Feirman* and *Edward F. Glynn, Jr.*

For the respondents: *Kathleen E. McDermott* and *Thomas L. Feazell*, in-house counsel, Russell, Ky., for respondent Ashland Oil Co.

COMPLAINT

The Federal Trade Commission, having reason to believe that Bass Brothers Enterprises, Inc. ("Bass Brothers") and Sid Richardson Carbon & Gasoline Co. ("Sid Richardson") intend to acquire the assets located in the United States of the Carbon Black Division of Ashland Chemical Company, a division of Ashland Oil, Inc. (collectively "Ashland"), 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); and it appearing that a proceeding by the Commission in respect thereof would be in the public interest, the Commission hereby issues its complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), stating its charges as follows:

I. BASS BROTHERS ENTERPRISES, INC. AND SID RICHARDSON
CARBON & GASOLINE CO.

1. Respondent Bass Brothers Enterprises, Inc. is a corporation organized and existing under the laws of the State of Texas with its corporate headquarters at 2700 First City Bank Tower, 201 Main Street, Fort Worth, Texas.

2. Respondent Sid Richardson Carbon & Gasoline Co. is a corporation organized and existing under the laws of the State of Texas with

its corporate headquarters at 2700 First City Bank Tower, 201 Main Street, Fort Worth, Texas.

II. ASHLAND OIL, INC.

3. Respondent Ashland Oil, Inc. is a corporation organized and existing under the laws of the state of Kentucky with its corporate headquarters at 1000 Ashland Drive, Russell, Kentucky.

III. JURISDICTION

4. At all times relevant herein, each of the companies named in this complaint has been engaged in activities that are in or affecting commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended (15 U.S.C. 12), and Section 4 of the Federal Trade Commission Act, as amended (15 U.S.C. 44).

IV. THE PROPOSED ACQUISITION

5. On November 15, 1983, Bass Brothers entered into an agreement to acquire substantially all of the material operating assets in the United States of Ashland's Carbon Black Division. Bass Brothers is also acquiring a one-year option to purchase an irrevocable exclusive license to use Ashland's new energy-efficient reactor technology for manufacturing carbon black in the United States. After the proposed acquisition, the Ashland carbon black operations will be integrated with those of Sid Richardson.

V. TRADE AND COMMERCE

6. The relevant product market in which to assess the competitive effects of the acquisition is the market for carbon black.

7. The relevant geographic market in which to assess the competitive effects of the acquisition is the United States.

8. The relevant market is highly concentrated.

9. Barriers to entry into the production and distribution of the relevant product are substantial.

10. Both Sid Richardson and Ashland are substantial competitors in the relevant product and geographic markets.

VI. EFFECTS OF THE PROPOSED ACQUISITION

11. The effect of the proposed acquisition, if consummated, may be to substantially lessen competition or tend to create a monopoly in the relevant markets 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), inasmuch as it will, among other things, result in the following:

- (a) Eliminate substantial actual competition between Sid Richardson and Ashland in the relevant market;
- (b) Eliminate Ashland as a substantial competitor in the relevant market;
- (c) Substantially increase concentration in an already highly concentrated market, therefore increasing the likelihood of collusion;
- (d) Encourage additional mergers or acquisitions in the relevant market, thereby further increasing the likelihood of collusion;
- (e) Tend to reduce the degree of price competition in the relevant market;
- (f) Tend to reduce the volume of production of carbon black below competitive levels; and
- (g) Tend to reduce actual competition among other companies engaged in the production and distribution of the relevant product.

VII. VIOLATIONS CHARGED

12. The proposed acquisition constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(f) of

its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Ashland Oil, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kentucky, with its corporate headquarters at 1000 Ashland Drive, Russell, Kentucky.

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

ORDER

Definitions

For the purposes of this order the following definitions shall apply:

Carbon black means furnace-process and thermal-process carbon black, whether used for rubber or other applications.

Ashland means Ashland Oil, Inc., as well as its officers, employees, representatives, agents, parents, divisions, subsidiaries, successors, and assigns.

Bass Brothers means Bass Brothers Enterprises, Inc., as well as its officers, employees, representatives, agents, parents, divisions, subsidiaries, successors, and assigns.

SRCG means Sid Richardson Carbon & Gasoline Co., as well as its officers, employees, representatives, agents, parents, divisions, subsidiaries, successors, and assigns.

Production capacity means the practical annual productive capacity of all units, including units currently in operation and units that could be put into operation with or without time delay or additional investment.

I.

It is ordered, That, unless Ashland has already done so, it will, not later than fourteen (14) days after this order becomes final, terminate any agreement that provides for or contemplates the acquisition of Ashland's carbon black business by Bass Brothers or Sid Richardson, including but not limited to the letter of intent signed on or about November 15, 1983, return or destroy all documents containing or recording confidential information provided to Ashland by Bass Brothers or SRCG, and recover from Bass Brothers and SRCG all documents containing or recording confidential information provided to Bass Brothers and SRCG by Ashland, in connection with acqui-

tion negotiations or agreements. Nothing herein contained shall relieve Ashland from any obligation of confidentiality imposed by agreement among Bass Brothers, SRCG and Ashland.

II.

It is further ordered, That for a period of four (4) years from the date on which the Agreement consenting to the issuance of this order is signed, Ashland shall not sell, transfer, or divest, either directly or indirectly, any carbon black manufacturing plant in the United States to any person engaged in the production of carbon black in the United States, unless Ashland has filed the notification set out in Section III of this order and the waiting period set out in Section III of this order has expired. *Provided, however,* That such sale, transfer, or divestiture shall not be subject to this Section II: (1) if the sale, transfer, or divestiture is of a single plant, and the acquiring firm's share of carbon black production capacity in the United States in the most recent calendar year preceding the transaction is no greater than fifteen percent; or (2) if notification of the transaction is required to be made, and in fact is made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

III.

It is further ordered, That the notification required of Ashland by Section II of this order shall be made to the Director of the Bureau of Competition of the Federal Trade Commission, shall refer to this order, and shall include such information and be in such form as is required of the acquired person for notification of an acquisition made pursuant to Section 7A of the Clayton Act and any rules promulgated thereunder. After filing such notification, Ashland shall observe the provisions and requirements of Paragraphs (a), (b), and (e) of Section 7A of the Clayton Act, 15 U.S.C. 18a, and any rules promulgated thereunder, that relate to prohibition of an acquisition prior to expiration of the waiting period, granting of requests for early termination, extension of waiting period, submission of additional information or documentary material, and other governmental action or information requests, that are in effect at the time the notification is filed, which provisions and requirements are incorporated herein by reference. *Provided,* That no party other than Ashland must file notification under this Section III, and the duration of the waiting period shall not be affected by the failure of any party other than Ashland to submit documents or information if requested.

IV.

It is further ordered, That notification and other documents required to be filed by Ashland with the Director of the Bureau of Competition by Sections II and III of this order shall not be deemed "compliance reports" within the meaning of Rule 4.9 of the Commission's Rules of Practice, 16 C.F.R. 4.9.

V.

It is further ordered, That Ashland shall notify the Commission at least thirty (30) days prior to any proposed corporate change such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this order.

VI.

It is further ordered, That if, prior to the expiration of this order, the Commission dismisses the complaint against Bass Brothers and SRCG without an order, this order shall be terminated by the Commission upon application by Ashland.

VII.

It is further ordered, That Ashland shall, within thirty (30) days after making any sale, transfer, or divestiture of any carbon black manufacturing plant in the United States that is not subject to notification under Section II of this order, file with the Commission a written report describing such transaction.

VIII.

It is further ordered, That Ashland shall, within sixty (60) days after service upon it of this order, file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
MASSACHUSETTS FURNITURE AND PIANO MOVERS
ASSOCIATION, INC.

DISMISSAL ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket 9137. Final Order, Sept. 28, 1983—Dismissal Order, March 19, 1986

ORDER OF DISMISSAL

The Commission has determined that the continued prosecution of this case is no longer in the public interest. Accordingly,
It is ordered, That the complaint be and hereby is dismissed.
Commissioner Strenio did not participate.