

IN THE MATTER OF

OCCIDENTAL PETROLEUM CORPORATION, ET AL.

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

Docket 9205. Complaint, April 11, 1986—Decision, July 19, 1988

This consent order requires, among other things, Tenneco, Inc., a Houston, Tx. corporation that manufactures and sells polyvinyl chloride (PVC), to abide by any divestiture order issued by the Commission against Occidental and to abide by the stipulations regarding the reacquisition of the Burlington, N.J. plant from Occidental. The order prohibits Tenneco from interfering with the relief ordered by the Commission and requires that they cooperate in the transfer of assets to a third party or business divested by Occidental pursuant to the order of the Commission.

Appearances

For the Commission: *Rhett R. Krulla.*

For the respondents: *Steven R. Hunsicker, Baker & Botts,*
Washington, D.C.

COMPLAINT

The Federal Trade Commission having reason to believe that respondents, Occidental Petroleum Corporation, Occidental Chemical Corporation, Tenneco, Inc., and Tenneco Polymers, Inc., corporations subject to the jurisdiction of the Federal Trade Commission, have entered into an agreement, described in paragraph 12 herein, that, if consummated, would violate the provisions 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; that said agreement and the actions of respondents to implement that agreement constitute violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and it appearing to the Commission that a proceeding 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: [2]

I. DEFINITIONS

1. For purposes of this complaint, the following definitions shall apply:

a. "*Polyvinyl chloride*" or "*PVC*" means any vinyl chloride homopolymer with the repeating unit $\text{CH}_2=\text{CHCl}$, and any copolymer of vinyl chloride with varying amounts of other chemicals, including vinyl acetate, ethylene, propylene, vinylidene chloride, or acrylates;

b. "*Mass and suspension PVC*" includes PVC produced by the mass or bulk process, in which vinyl chloride is polymerized without the addition of other liquids, and PVC produced by the suspension process, in which vinyl chloride monomer droplets are suspended in an aqueous system;

c. "*Suspension PVC copolymer*" means any copolymer of vinyl chloride and vinyl acetate, that is produced by the suspension process and contains over 50 percent by weight vinyl chloride;

d. "*Dispersion PVC*" means PVC produced by the emulsion or dispersion process.

II. OCCIDENTAL PETROLEUM CORPORATION

2. Respondent Occidental Petroleum Corporation ("Occidental") is a corporation organized and existing under the laws of the State of California, with its principal place of business in Los Angeles, California. [3]

3. For the year ending December 31, 1984, Occidental had net sales of \$15.6 billion and assets of \$12.3 billion.

4. Occidental 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.

III. OCCIDENTAL CHEMICAL CORPORATION

5. Respondent Occidental Chemical Corporation ("OxyChem") is a corporation organized and existing under the laws of the State of California. It is a wholly-owned subsidiary of Occidental and is responsible for the distribution of industrial chemicals and plastics. OxyChem is the proposed acquirer of the relevant assets of Tenneco Polymers.

6. OxyChem 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. [4]

IV. TENNECO, INC.

7. Respondent Tenneco, Inc. ("Tenneco") is a corporation organized and existing under the laws of the State of Delaware, with its principal executive offices and place of business in Houston, Texas.

8. In the fiscal year ending December 3, 1984, Tenneco's net income was \$631 million on sales and operating revenues of \$14.9 billion.

9. Tenneco 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.

V. TENNECO POLYMERS, INC.

10. Respondent Tenneco Polymers, Inc. ("Tenneco Polymers") is a corporation organized and existing under the laws of the State of Delaware. It is wholly-owned subsidiary of Tenneco, and it owns and operates two plants that produce polyvinyl chloride ("PVC") resin in Pasadena, Texas and Burlington, New Jersey.

11. Tenneco Polymers 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. [5]

VI. THE ACQUISITIONS

12. Occidental has entered into an agreement with Tenneco pursuant to which Occidental, through its wholly-owned subsidiary, OxyChem, intends to purchase assets and obtain options on certain other assets of Tenneco Polymers associated with its PVC manufacturing business. The total value of the transaction is approximately \$70 million. Through the proposed acquisition, OxyChem will effectively acquire the PVC business of Tenneco Polymers.

VII. TRADE AND COMMERCE

13. For purposes of this complaint, the relevant lines of commerce are:

- a. mass and suspension PVC;
- b. suspension PVC copolymer; and
- c. dispersion PVC.

14. For purposes of this complaint, the relevant section of the country with respect to each of the relevant lines of commerce in the United States as a whole.

VIII. MARKET STRUCTURE

15. In 1985, approximately \$6.21 billion pounds of mass and suspension PVC were produced in the United States. The mass and suspension PVC market is moderately concentrated whether measured by the Herfindahl-Hirschmann Index ("HHI") or by four-firm and eight-firm concentration ratios. [6]

16. In 1985, approximately 226 million pounds of suspension PVC copolymer were produced in the United States. The suspension PVC copolymer market is highly concentrated whether measured by the HHI or by four-firm and eight-firm concentration ratios.

17. In 1985, approximately 416 million pounds of dispersion PVC were produced in the United States. The dispersion PVC market is moderately to highly concentrated whether measured by the HHI or by four-firm and eight-firm concentration ratios.

IX. BARRIERS TO ENTRY

18. It is difficult to enter into the manufacture and sale of each relevant product.

X. ACTUAL COMPETITION

19. Occidental and Tenneco are actual competitors in the manufacture and sale of the relevant products.

XI. EFFECTS

20. The aforesaid acquisition, if consummated, will significantly increase the levels of concentration in the relevant markets. [7]

21. The effect of the aforesaid acquisition, if consummated, may be substantially to lessen competition in each of 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, in the following ways, among others:

- a. it will eliminate actual competition between Occidental and Tenneco and between Tenneco and others in the relevant markets;
- b. it will significantly enhance the possibility of collusion or interdependent coordination among the remaining firms in the relevant markets; and
- c. it will significantly enhance the possibility of dominant firm behavior to increase price in the suspension PVC copolymer market.

XII. VIOLATIONS CHARGED

22. The proposed acquisition of the assets and business of Tenneco Polymers by Occidental and OxyChem would, if consummated, violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

23. The Acquisition Agreement set forth in paragraph 12 constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

24. The proposed acquisition of the assets and business of Tenneco Polymers by Occidental and OxyChem would, if consummated, violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

Commissioner Strenio did not participate.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging respondents Occidental Petroleum Corporation and Occidental Chemical Corporation (collectively "Occidental"), and Tenneco Inc. and Tenneco Polymers, Inc. (collectively "Tenneco"), with 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 respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

Respondents Tenneco, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a [2] consent order, an admission by Tenneco 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 that the law had 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 as to respondents Tenneco 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. Respondents Tenneco Inc. and Tenneco Polymers, Inc. are corporations organized, existing, and doing business under and by virtue of the laws of Delaware with principal offices at 1010 Milam, Houston, Texas.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents Tenneco [3] Inc. and Tenneco Polymers, Inc., and the proceeding is in the public interest.

ORDER

I.

Definitions

For purposes of this order the following definitions shall apply:

A. "*Tenneco*" means Tenneco Inc. and Tenneco Polymers, Inc., two corporations organized under the laws of Delaware with their principal places of business in Houston, Texas, and their directors, officers, agents, and employees, and their subsidiaries, divisions, affiliates, successors, and assigns.

B. "*Occidental*" means Occidental Petroleum Corporation and Occidental Chemical Corporation, two corporations organized under the laws of California with their principal places of business in Los Angeles, California, and their directors, officers, agents, and employees, and their subsidiaries, divisions, affiliates, successors, and assigns;

C. "*PVC*" means any vinyl chloride homopolymer with the repeating unit $\text{CH}_2=\text{CHCl}$, and any copolymer of vinyl chloride with varying amounts of other chemicals, including vinyl acetate, ethylene, propylene, vinylidene chloride, or acrylates; [4]

D. "*Suspension PVC copolymer*" means any copolymer of vinyl

chloride and vinyl acetate, that is produced by the suspension process and contains over 50 percent by weight vinyl chloride;

E. "*Dispersion PVC*" means PVC produced by the emulsion or dispersion process.

II.

It is ordered, That, in the event any divestiture order is entered by the Commission against Occidental in this proceeding, Tenneco shall consent to the assignment by Occidental, in a manner that has received the prior approval of the Federal Trade Commission and on conditions (other than consideration paid by Occidental to Tenneco) identical to those imposed on Occidental in the Sale Agreement, to the successor(s) or acquirer(s) of any PVC assets or business divested by Occidental pursuant to that order, of all benefits, rights and privileges extended to Occidental under the terms of the Sale Agreement and any attached exhibits (including, but not limited to the option rights, if any then exist, under Section 9.05 of that agreement), except for the option described in Exhibit V of the Sale Agreement which shall not be assigned. [5]

III.

It is further ordered, That Tenneco shall take no action that interferes with the accomplishment of any relief ordered by the Commission in this proceeding. Tenneco shall cooperate in the transfer to a third party of any PVC assets or business divested by Occidental pursuant to an order of the Commission.

IV.

Tenneco acknowledged that the final order of the Federal Trade Commission against Occidental in this proceeding may prohibit Occidental from exercising the option granted in Exhibit V of the Sale Agreement or may provide that Tenneco's reacquisition of the Burlington, New Jersey, PVC plant from Occidental pursuant Exhibit V of the Sale Agreement shall only be made in a manner that has received the prior approval of the Commission. Any reacquisition by Tenneco of the Burlington, New Jersey, PVC plant from Occidental pursuant to Exhibit V of the Sale Agreement shall only be made in a

manner that is consistent with the purposes of the Commission's final order against Occidental in this proceeding.

V.

It is further ordered, That for a period of ten years following the date of this order, for the purposes of determining compliance with this order, upon written request of the Federal Trade Commission or the Director or any Assistant Director of the Bureau of Competition of the Federal Trade Commission made to [6] Tenneco at its principal offices and subject to any legally recognized privilege, Tenneco shall permit duly authorized representatives of the Federal Trade Commission or of the Bureau of Competition:

A. Reasonable access during the office hours of Tenneco, which may have counsel present, to those books, ledgers, accounts, correspondence, memoranda, reports, and other records and documents in Tenneco's possession or control that relate to any matter contained in this order; and

B. An opportunity, subject to the reasonable convenience of Tenneco, to interview officers or employees of Tenneco, who may have counsel present, regarding such matters.

VI.

It is further ordered, That, while paragraph V of this order is effective, Tenneco shall notify the Commission at least thirty (30) days prior to any proposed corporate change, such as dissolution, assignment of substantially all assets, sale, or acquisition resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries in the United States, or any other change in the corporation which may affect compliance with the obligations arising out of this order. [7]

VII.

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

IN THE MATTER OF
PATRICK S. O'HALLORAN, M.D., ET AL.

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

Docket C-3232. Complaint, Aug. 26, 1988—Decision, Aug. 26, 1988

This consent order prohibits, among other things, Patrick S. O'Halloran, M.D., a Rhode Island obstetrician, from dealing with any government health care program on collectively determined terms or from collectively refusing to deal with any government health care program.

Appearances

For the Commission: *L. Barry Costilo.*

For the respondent: *Donato Andre D'Andrea*, Newport, R.I.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that respondents, Dr. Patrick S. O'Halloran, Dr. Donald A. Guadagnoli, Dr. Nasser Chahmirzadi, Dr. Douglas G. Wilson and Dr. James C. Gedney ("respondents"), have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondents are physicians practicing on Aquidneck Island, Rhode Island. They are engaged in the business of providing obstetrical services to patients for a fee.

PAR. 2. Respondents constitute all of the physicians who practice obstetrics on Aquidneck Island, and are the only source of obstetrical services on the Island. Residents of Aquidneck Island who are eligible for Medicaid rarely leave the Island to obtain obstetrical services.

PAR. 3. Except to the extent that competition has been restrained as alleged herein, respondents have been and are now in competition among themselves.

PAR. 4. Respondents' general business practices and the acts and