

## IN THE MATTER OF

## OCCIDENTAL PETROLEUM CORPORATION, ET AL.

*Docket 9205. Interlocutory Order, November 22, 1989*

## ORDER

Pending appeal from the Initial Decision, complaint counsel and the respondents have jointly moved that the Commission (1) modify the order of the Administrative Law Judge by substituting divestiture of Occidental's Burlington, New Jersey ("Burlington North"), plant for divestiture of Tenneco's Pasadena, Texas, plant and (2) accept the order, as modified, in final disposition of this matter. Various other modifications consistent with the substitute divestiture also are proposed. The motion is denied.

The principal arguments for the substitute divestiture, as presented in the briefs of the parties, are that (1) an immediate settlement and early divestiture will provide some relief from Occidental's allegedly unlawful acquisition of the polyvinyl chloride ("PVC") business of Tenneco in the near future and (2) the Administrative Law Judge's opinion cannot stand on appeal.

A settlement may in some circumstances be acceptable, partly because it will provide relief immediately, as against the uncertainty of any relief after all appeals are exhausted. Given the relative merits of the Burlington North and Pasadena plants, however, the substitute divestiture appears highly unlikely to achieve the remedial purposes envisioned by the Initial Decision. The Pasadena plant is a modern, low cost, large reactor suspension PVC plant, with an annual capacity (before the acquisition) of approximately 750 million pounds. Burlington North is a small, high cost, small reactor mass PVC plant, with an annual capacity of approximately 120 to 140 million pounds. The proposed substitute divestiture proposes a remedy far different from that required by the Administrative Law Judge in his Initial Decision and contemplated by the complaint. If the substitute divestiture were more comparable to the remedy required by the Administrative Law Judge, the prospect of an early settlement might outweigh the interest in obtaining a more substantial remedy. Here, however, the disparity is too great.

Occidental also argues in support of the substitute divestiture that the Administrative Law Judge's conclusion of a violation of law in the

mass and suspension PVC market will not withstand appeal. Occidental bases its argument principally on the decision of the Commission in *B.F. Goodrich*, Docket No. 9159. Complaint counsel do not support this argument and instead maintain that the Initial Decision would be upheld on appeal. An assessment of the relative merits of these assertions would require a full evaluation of the record. Although Occidental may indeed prevail in its appeal to the Commission or to the Court of Appeals, the conclusions of the Administrative Law Judge that conditions in the PVC market have changed since the record closed in *B.F. Goodrich* are facially plausible and require further consideration.

Accordingly, *it is ordered*, That the joint motion of the parties to modify the order of the Administrative Law Judge by substituting divestiture of Burlington North for divestiture of the Pasadena, Texas, plant and to make the order, as modified, the final order of the Commission be and it hereby is denied.

Commissioners Steiger and Owen not participating.

Complaint

112 F.T.C.

IN THE MATTER OF

COCA-COLA BOTTLING COMPANY  
OF THE SOUTHWEST, 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 9215. Complaint, July 29, 1988—Decision, Dec. 20, 1989*

This consent order requires, among other things, that Dr Pepper take no action that interferes with the accomplishment of any relief that might be ordered by the Commission against the Coca-Cola Bottling Company of the Southwest.

*Appearances*

For the Commission: *James E. Elliott, Joan Greenbaum and Constance M. Salemi.*

For the respondents: *Andy Berg and Owen Johnson, Akin, Gump, Strauss, Hauer & Feld, Washington, D.C. Philip D. Bartz, Morrison & Forester, Washington, D.C. Nelson A. Bangs, Dr. Pepper Company, Dallas, Tx. and Gregory S.C. Huffman and Frank L. Hill, Thompson & Knight, Dallas, Tx.*

## 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 ("Commission"), having reason to believe that the respondent, Coca-Cola Company of the Southwest, a corporation, subject to the jurisdiction of the Commission, has acquired the Dr Pepper and the Canada Dry franchises and certain other assets from the San Antonio Dr Pepper Bottling Company, a wholly-owned subsidiary of the then Dr Pepper Company or DP Holdings, Inc., now respondent Dr Pepper/Seven-Up Company, a corporation, that may be in violation of 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, 15 U.S.C. 45; and that said acquisition constitutes a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45; and it appearing to the Commission that a proceeding by it in