

IN THE MATTER OF

ETHYL CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3814. Complaint, June 16, 1998--Decision, June 16, 1998*

This consent order requires, among other things, the Virginia-based manufacturer of lead anti-knock gasoline additives to modify its supply agreement with The Associated Octel Company. In addition, the consent order prohibits the respondent from disclosing to competitors historical, current, or future prices. The consent order also requires the respondent to notify the Commission prior to acquiring the assets of any firm engaged in the distribution of lead anti-knock compounds in the United States, or the manufacturing of lead anti-knock compounds worldwide.

Appearances

For the Commission: *Geoffrey Green, Michael Antalics and William Baer.*

For the respondent: *Jonathan Rich, Morgan, Lewis & Bockius, Washington, D.C.*

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 The Associated Octel Company Ltd., Great Lakes Chemical Corporation, and Ethyl Corporation, corporations, hereinafter sometimes collectively referred to as "respondents," have violated the provisions of Section 5 of the Federal Trade Commission 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. For the purpose of this complaint, "lead antiknock compounds" means gasoline additives that contain tetraethyl or tetramethyl lead, and that increase the octane rating of gasoline. Currently in the United States, lead antiknock compounds are added to aviation gasoline for piston engine aircraft and to certain motor gasoline for racing cars.

PAR. 2. Respondent Great Lakes Chemical Corporation ("Great Lakes") 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 Great Lakes Boulevard, West Lafayette, Indiana.

PAR. 3. Respondent The Associated Octel Company Ltd. ("Octel") is a corporation organized and existing under and by virtue of the laws of the United Kingdom with its office and principal place of business located at Oil Sites Road, Ellesmere Port, South Wirral, England, United Kingdom. Octel is a wholly-owned subsidiary of Great Lakes.

PAR. 4. Octel is now, and has for several years been, the world's largest manufacturer and seller of lead antiknock compounds. As of 1993, Octel operated production facilities in Ellesmere Port, England, Bussi, Italy and Paimboeuf, France. Its sales of lead antiknock compounds in 1993 were in excess of \$540 million, representing approximately 60 percent of worldwide sales of lead antiknock compounds.

PAR. 5. For several years up to and including 1993, Octel sold lead antiknock compounds to independent distributors for resale to refineries and gasoline blenders located throughout the United States. In 1994, Octel began to sell directly to U.S. customers.

PAR. 6. Respondent Ethyl Corporation ("Ethyl") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at 330 South Fourth Street, Richmond, Virginia.

PAR. 7. Ethyl was for several years the second largest manufacturer of lead antiknock compounds in the world. As of 1993, Ethyl operated one production facility located in Sarnia, Ontario. Its sales of lead antiknock compounds in 1993 were in excess of \$245 million, representing approximately 30 percent of worldwide sales of lead antiknock compounds.

PAR. 8. During the relevant time period, Ethyl has sold lead antiknock compounds to refineries and gasoline blenders located throughout the United States.

PAR. 9. The acts and practices of Octel and Ethyl, including the acts and practices alleged herein, are in commerce or affect commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 10. The relevant line of commerce in which to evaluate the competitive effects of respondents' acts and practices is the manufacture and sale of lead antiknock compounds.

PAR. 11. The relevant geographic market is the world.

PAR. 12. The relevant market set forth above is highly concentrated, whether measured by the Herfindahl-Hirschmann Index ("HHI") or two-firm and four-firm concentration ratios.

PAR. 13. Entry into the relevant market is difficult or unlikely.

PAR. 14. Between October 1993 and March 1994, Octel and Ethyl entered into a series of contracts, agreements, and understandings -- written and unwritten -- regarding the manufacture, distribution, and sale of lead antiknock compounds. Among the important undertakings are the following:

- (a) Ethyl agreed to cease manufacturing lead antiknock compounds.
- (b) Octel agreed to supply to Ethyl each year, for re-sale, a limited volume of lead antiknock compounds at a discount price.
- (c) Octel and Ethyl agreed that the maximum volume of lead antiknock compounds supplied to Ethyl each year through 1998 would be thirty five thousand metric tons. Octel and Ethyl agreed that the maximum volume of lead antiknock compounds supplied to Ethyl during each subsequent year would be a fixed portion of Octel's annual capacity to manufacture compounds. Under the contract, Octel is free to reduce its productive capacity, but must notify Ethyl one year in advance of such action.
- (d) Octel and Ethyl agreed that the price of lead antiknock compounds purchased by Ethyl for re-sale to customers in the United States and certain other countries would be adjusted each year, depending upon the change in the average sale price charged by Octel to retail customers located in the United States and certain other countries.
- (e) Octel agreed to notify Ethyl each year of the change in the average sale price charged by Octel to retail customers located in the United States and certain other countries, and to make its books and records, including sales contracts and invoices, available for inspection by an independent auditor reporting to Ethyl.
- (f) Octel agreed to cease the bulk shipping of lead antiknock compounds, and to transfer to Ethyl certain ocean going vessels dedicated to transporting lead antiknock compounds.

- (g) Ethyl agreed to provide to Octel all bulk shipping services required by Octel for the distribution of lead antiknock compounds.

PAR. 15. In March 1994, Ethyl closed its facility for the production of lead antiknock compounds located in Sarnia, Ontario.

PAR. 16. The acts and practices of respondents, as alleged herein, had the effect, or the tendency and capacity, to increase the likelihood of coordinated interaction among sellers of lead antiknock compounds, to restrain competition unreasonably, to increase prices and to injure consumers.

PAR. 17. The acts and practices of respondents, as alleged herein, constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. These acts and practices, or the effects thereof, will continue or recur in the absence of appropriate relief.

DECISION AND ORDER

The Federal Trade Commission ("the Commission") having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent 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 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 Commission having thereafter considered the matter and having determined that it has reason to believe that the respondent has violated the said Act, and that a 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 sixty (60) days, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Ethyl Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at 330 South Fourth Street, Richmond, Virginia.
2. The Federal Trade Commission has jurisdiction of the subject matter of the proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

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

A. "*Respondent*" means Ethyl Corporation, its directors, officers, employees, agents and representatives, predecessors, successors and assigns, and its subsidiaries, divisions, groups, and affiliates controlled, directly or indirectly, by Ethyl Corporation, and the respective directors, officers, employees, agents and representatives, successors and assigns of each.

B. "*Commission*" means the Federal Trade Commission.

C. "*Great Lakes*" means Great Lakes Chemical Corporation, its directors, officers, employees, agents and representatives, predecessors, successors and assigns, and its subsidiaries, divisions, groups, and affiliates controlled, directly or indirectly, by Great Lakes Chemical Corporation, and the respective directors, officers, employees, agents and representatives, successors and assigns of each.

D. "*Octel*" means The Associated Octel Company Limited, its directors, officers, employees, agents and representatives, predecessors, successors and assigns, and its subsidiaries, divisions, groups, and affiliates controlled, directly or indirectly, by The Associated

Octel Company Limited, and the respective directors, officers, employees, agents and representatives, successors and assigns of each.

E. "*Supply Contract*" means the Agreement for Supply of Lead Antiknock Compounds dated as of the 22nd day of December 1993 between The Associated Octel Company Limited and Ethyl Corporation, and includes all schedules thereto.

F. "*Compounds*" means lead antiknock compounds of the types described in Schedule B to the Supply Contract, and includes tetraethyl lead and tetramethyl lead.

G. "*Force Majeure Event*" means an event or circumstance beyond the reasonable control of the manufacturer of Compounds affected thereby, including fire, storm, flood, act of God, war, or explosion. No event or circumstance shall constitute a Force Majeure Event if such event or circumstance could have been prevented through the exercise of reasonable diligence.

H. "*United States*" means the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, and all territories, dependencies, and possessions of the United States of America.

II.

It is ordered, That within thirty (30) days from the date this order becomes final, respondent shall amend the Quantities Term of the Supply Contract to provide that, during each calendar year:

A. With respect to supplies of Compounds for Ethyl customers located in the United States, Octel shall make available for sale to Ethyl all such quantities of Compounds as Ethyl may order from time to time for supply to such customers; and

B. With respect to supplies of Compounds for Ethyl customers located outside of the United States, the maximum quantity of Compounds available for sale from Octel to Ethyl shall not be diminished by, affected by, or dependent upon the quantity of Compounds purchased by Ethyl for supply to customers located in the United States.

III.

It is further ordered, That within thirty (30) days from the date this order becomes final, respondent shall amend the Price Term of the Supply Contract to provide that:

A. With respect to supplies of Compounds purchased by Ethyl from Octel for resale in the United States, the selling price shall not be calculated by reference to, affected by, or dependent upon, directly or indirectly, the price received by Octel for Compounds sold to any other customer or group of customers; and

B. With respect to supplies of Compounds purchased by Ethyl from Octel for resale outside the United States, the selling price shall not be calculated by reference to, affected by, or dependent upon, directly or indirectly, the price received by Octel for Compounds sold to any customer or group of customers located in the United States.

IV.

It is further ordered, That respondent shall not enter into any contract modification, contract, agreement, or understanding with Great Lakes or Octel relating to the supply of Compounds: (A) that directly or indirectly limits the quantity of Compounds available to Ethyl from Octel for resale in the United States; (B) that provides that the maximum quantity of Compounds available from Octel to Ethyl for resale outside of the United States shall be diminished by, affected by, or dependent upon the quantity of Compounds purchased by Ethyl for supply to customers located in the United States; (C) that provides that the price of Compounds purchased by Ethyl for resale within the United States is calculated by reference to, affected by, or dependent upon, directly or indirectly (i) the price received by Octel for Compounds sold to any other customer or group of customers, and/or (ii) the quantity of Compounds purchased by Ethyl; or (D) that provides that the price of Compounds purchased by Ethyl for resale outside of the United States is calculated by reference to, affected by, or dependent upon, directly or indirectly (i) the price received by Octel for Compounds sold to any customer or group of customers located in the United States, and/or (ii) the quantity of Compounds purchased by Ethyl for resale within the United States.

V.

It is further ordered, That respondent shall not provide, disclose, or otherwise make available to Great Lakes or Octel, directly or through an intermediary, information regarding respondent's historical, current, or future prices for Compounds sold to customers located in the United States. Provided, however, that this paragraph

shall not apply to the disclosure of historical price information for transactions consummated in full more than twenty four (24) months prior to the time of disclosure.

VI.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final:

A. Except as provided in paragraph VI.B below, respondent shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

1. Acquire any stock, share capital, equity or other interest in any person or concern, corporate or non-corporate, engaged in at the time of such acquisition, or within the three years preceding such acquisition engaged in, the distribution of Compounds in or to the United States, or the manufacture of Compounds anywhere in the world; or

2. Acquire any assets used or previously used (and still suitable for use) in the distribution of Compounds in the United States, or the manufacture of Compounds anywhere in the world; or

3. Sell or transfer Compounds to any person or concern engaged in at the time of such sale or transfer, or within the three years preceding such sale or transfer engaged in, the manufacture of Compounds anywhere in the world.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of respondent and not of any other party to the transaction. Respondent shall provide the Notification to the Commission at least thirty days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for

additional information or documentary material (within the meaning of 16 C.F.R. 803.20), respondent shall not consummate the transaction until twenty days after submitting such additional information or documentary material. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

B. The conditions set forth in paragraph VI.A shall not be applicable to any acquisition for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a. The conditions set forth in paragraph VI.A.2 shall not be applicable to the acquisition from any person during any calendar year of assets having an aggregate fair market value of less than \$2 million. The conditions set forth in paragraph VI.A.3 shall not be applicable to the sale or transfer of Compounds from respondent to Great Lakes or Octel. The conditions set forth in paragraph VI.A.3 also shall not be applicable to the sale or transfer of Compounds from respondent to any person where the aggregate volume of Compounds sold or transferred to such person during the calendar year does not exceed the greatest of: (i) one million pounds, (ii) 20 percent of such person's production of Compounds during the preceding calendar year, or (iii) the shortfall in the annual production of Compounds by such person, relative to such person's historical production levels, where such shortfall is caused by a Force Majeure Event.

C. The conditions set forth in paragraphs VI.A.1 and VI.A.3 shall not be applicable to the acquisition of any interest in, or the sale of Compounds to, any person who, at the time of such transaction or within the preceding three years, owned less than 20 percent of the equity stock of Octel, and was not otherwise engaged in the distribution of Compounds in or to the United States or the manufacture of Compounds anywhere in the world.

D. In any action by the Commission alleging violations of this order, respondent shall bear the burden of proof with regard to demonstrating that the aggregate volume of Compounds sold or transferred by respondent to any person does not exceed: (i) 20 percent of such person's production of Compounds during the preceding calendar year, and/or (ii) the shortfall in the annual production of Compounds by such person, relative to such person's historical production levels, and that such shortfall is caused by a Force Majeure Event.

VII.

It is further ordered, That:

A. Within sixty (60) days after the date this order becomes final, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which respondent has complied and is complying with this order. Such report shall include a copy of the revised Supply Contract, executed by Ethyl and Octel, and incorporating the contract amendments specified in paragraphs II and III of this order.

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this order.

VIII.

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

IX.

It is further ordered, That, for the purpose of determining or securing compliance with this order, upon written request, respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon five days' notice to respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent.

X.

It is further ordered, That respondent shall:

A. Within thirty (30) days after the date on which this order becomes final, send by first class mail a copy of this order to: (i) all of the directors of Ethyl Corp. and of each corporation within respondent that is engaged in the manufacture, purchase and/or sale of Compounds (hereinafter referred to as "Directors"); (ii) all of the officers of Ethyl Corp. and of each corporation within respondent that is engaged in the manufacture, purchase and/or sale of Compounds (hereinafter referred to as "Officers"); and (iii) all of respondent's management employees with responsibility for the manufacture, purchase and/or sale of Compounds (hereinafter referred to as "Management Employees");

B. For a period of three (3) years after the date on which this order becomes final, mail by first class mail a copy of this order to each person who becomes a Director, Officer, or Management Employee, within thirty (30) days of the commencement of such person's employment or affiliation with respondent; and

C. For a period of three (3) years after the date on which this order becomes final, require each of its Directors, Officers, and Management Employees to sign and submit to respondent within thirty (30) days of the receipt thereof a statement that: (1) acknowledges receipt of the order; (2) represents that the undersigned has read and understands the order; and (3) acknowledges that the undersigned has been advised and understands that non-compliance with the order may subject Ethyl Corporation to penalties for violation of the order.

XI.

It is further ordered, That this order shall terminate on June 16, 2018.

Decision and Order

125 F.T.C.

IN THE MATTER OF

THE ASSOCIATED OCTEL COMPANY LTD., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3815. Complaint, *¹ June 16, 1998--Decision, June 16, 1998*

This consent order requires, among other things, The Associated Octel Company and the Great Lakes Chemical Corporation to modify its supply agreement with Ethyl Corporation. In addition, the consent order prohibits the respondent from disclosing to competitors historical, current, or future prices. The consent order also requires the respondents to notify the Commission prior to acquiring the assets of any firm engaged in the distribution of lead anti-knock compounds in the United States, or the manufacturing of lead anti-knock compounds worldwide.

Appearances

For the Commission: *Geoffrey Green, Michael Antalics and William Baer.*

For the respondents: *Sam Haubold, Kirkland & Ellis and Kevin Arquit, Rogers & Wells, Washington, D.C.*

DECISION AND ORDER

The Federal Trade Commission ("the Commission") having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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