IN THE MATTER OF

TEXACO INC. and GETTY OIL COMPANY

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 C-3137. Complaint, July 10, 1984—Decision, July 10, 1984

This Consent Order requires Texaco Inc., among other things, to divest within 12 months to a Commission-approved purchaser, all the Getty assets and properties listed in Schedule A (excluding the assets listed in Schedule C). Should Texaco fail to timely divest the Schedule A properties, a trustee appointed by the court or the Commission will have 18 months in which to effect divestiture of the remaining assets. Until such time as the specified properties have been divested, Texaco is required to maintain their viability and marketability, and hold them separate and apart in accordance with the terms and provisions set forth in the Order. Texaco is further required, for a period of ten years, to take the following actions: 1) vote its shares in favor of any proposal to increase the capacity or enhance the ability of the Colonial Pipeline Company to transport refined product north of Dorsey Junction, Maryland; 2) offer Getty customers using the Getty pipeline from Santa Fe Springs to Los Angeles in 1983 access to that pipeline under the 1983 terms and conditions; and 3) refrain from acquiring, without prior Commission approval, any concern engaged in the refining or wholesale distribution of gasoline or middle distillates in certain states or in transporting any petroleum product by pipeline in or into Colorado. Additionally, for a period of five years, Texaco is required to sell to customers of Getty in 1983 (excluding 10 major oil companies), and to other West Coast refiners, California crude oil of similar grade and quality to that sold in 1983 on the contractual terms listed in Schedule B.

Appearances

For the Commission: *Marc G. Schildkraut.*

For the respondents: *William C. Weitzel, Jr.* and *C. Benjamin Crisman, Jr.,* in-house counsel, White Plains, N.Y., for respondent Texaco Inc. and *Jack Leone,* Los Angeles, Ca., for respondent Getty Oil Co.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent, Texaco Inc., a corporation subject to the jurisdiction of the Federal Trade Commission, intends to acquire, or has acquired the stock or assets of respondent Getty Oil Company, 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 that a proceeding in respect thereof would be in the public interest, 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. Definitions

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

a. *Texaco* means Texaco Inc., its predecessors, subsidiaries, divisions, groups, affiliate entities, and each of their past or present directors, officers, employees, agents and representatives; and each partnership, joint venture, joint stock company or concession in which Texaco is a participant. The words *subsidiary, affiliate* and *joint venture* refer to any partial (10 percent or more) as well as total ownership or control.

b. *Getty* means Getty Oil Company, its predecessors, subsidiaries, divisions, groups, affiliate entities, and each of their past or present directors, officers, employees, agents and representatives; and each partnership, joint venture, joint stock company or concession in which Getty is a participant. The words *subsidiary, affiliate* and *joint venture* refer to any partial (10 percent or more) as well as total ownership or control.

c. *The acquisition* means the transaction described, in whole or in part, in paragraph 14 of this Complaint.

d. *Aviation gasoline* means that product as defined in connection with Department of Energy Form EIA–810, Monthly Refinery Report, product code 111.

e. *Gasoline* means motor gasoline as defined in connection with Department of Energy Form EIA–810, Monthly Refinery Report, product codes 132 and 133.

f. *Jet fuels* means naptha-type and kerosene-type jet aircraft fuel, as defined in connection with Form EIA–810, Monthly Refinery Report, product codes 211 and 213.

g. *Middle distillates* means the products commonly known as number one fuel oil (kerosene), and number two fuel oil (home heating, diesel), as defined in connection with Department of Energy Form EIA–810, Monthly Refinery Report, product codes 311 and 411.

h. *Refined light products* means aviation gasoline, gasoline, jet fuels, and middle distillates.

i. *Heavy crude oil* means crude oil below 20 API gravity.

j. *Terminal* means a facility used for receipt, storage, and distribution of gasoline, middle distillates, or jet fuel, and which receives product directly via pipeline, navigable waterway or from an adjacent refinery.

II. Respondents

A. *Texaco*

2. Respondent Texaco is a corporation organized and doing business under the laws of the state of Delaware with its executive offices at White Plains, New York.

3. Respondent Texaco is a fully integrated petroleum company, engaged in the exploration for and production of crude oil and natural gas, refining, the transportation of crude oil, natural gas and refined products, and the distribution and marketing of refined products and natural gas.

4. In 1982, respondent Texaco had revenues of about $48 billion, assets of about $27 billion, and net income of about $1.28 billion.

5. In 1982, respondent Texaco ranked sixth in the United States in crude oil production, eighth in domestic crude oil reserves, fifth in refining capacity, and fourth in gasoline sales.

6. Respondent Texaco has refineries located at Wilmington, California; Lawrenceville, Illinois; Convent, Louisiana; Westville, New Jersey; Port Arthur, Texas; Port Neches, Texas; Amarillo, Texas; El Paso, Texas; and Anacortes, Washington, with a combined refining capacity of 937 thousand barrels per day. In 1982, Texaco sold its refineries in West Tulsa, Oklahoma and shut down its refinery in Casper, Wyoming.

7. At all times relevant herein, respondent Texaco has been and is now 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.

B. *Getty*

8. Respondent Getty is a corporation organized and doing business under the laws of the state of Delaware with its executive offices at Los Angeles, California.

9. Respondent Getty is a fully integrated petroleum company, engaged in the exploration for and production of crude oil and natural gas, refining, the transportation of crude oil, natural gas and refined products, and the distribution and marketing of refined products and natural gas.

10. In 1982, respondent Getty had revenues of about $12.3 billion, assets of about $9.9 billion, and net income of about $692 million.

11. In 1982, respondent Getty ranked 10th nationally in crude oil production, 6th in United States crude oil reserves, 18th in United States refining capacity, and 16th in United States motor gasoline sales.

12. Respondent Getty has refineries located at Bakersfield, California; Delaware City, Delaware; and El Dorado, Kansas, with a combined refining capacity of about 278 thousand barrels per day.

13. At all times relevant herein, respondent Getty has been and is now 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. The Acquisition

14. On January 9, 1984, Texaco commenced a tender offer for 35 percent of Getty voting securities with the intention of effectuating a follow-up merger for the remaining outstanding shares; and on January 6, 1984, Texaco and Getty entered into a merger agreement pursuant to which Getty granted Texaco an option to purchase authorized but unissued shares constituting approximately 10.2 percent of the total Getty shares that would be outstanding after such issuance. Further, on or about January 6, 1984, and January 8, 1984, Texaco entered into agreements to purchase voting securities constituting approximately 11.8 percent and 40.2 percent, respectively, of the outstanding Getty shares. The total value of the transaction is about $10.1 billion and, if consummated, would result in the second largest petroleum company in the United States in terms of assets.

IV. Trade and Commerce

A. *Manufacture of Refined Light Products in the Northeast United States*

15. One relevant line of commerce in which to evaluate the effects of the acquisition is the manufacture of refined light products.

16. The relevant section of the country is the Northeast region, composed of Maryland, Delaware, eastern Pennsylvania, New Jersey, eastern New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont and Maine, and any submarket thereof. This relevant section of the country also includes the United States possession of the Virgin Islands.

17. The manufacture of refined light products in the relevant section of the country is moderately concentrated.

18. Respondents Texaco and Getty are actual competitors of each other and of other firms in the manufacture of refined light products in the relevant section of the country. Respondent Texaco owns a refinery in Westville, New Jersey, that manufactures refined light products. Respondent Getty owns a refinery in Delaware City, Delaware, that manufactures refined light products.

19. Refineries in the Northeast region have a locational advantage over Gulf Coast refineries in the supply of refined light products to the relevant section of the country.

20. Refineries in the Gulf Coast area are unlikely to be able to expand substantially, and within a reasonable period of time, shipments of refined light products to the relevant section of the country on Colonial Pipeline due to the likelihood of capacity constraints on the pipeline.

21. Foreign imports of refined light product into the relevant section of the country are unlikely within a reasonable period of time to provide substantial competition to the manufacturers of refined light product in the relevant section of the country.

22. Conditions of entry into the manufacture of refined light products in the relevant section of the country are difficult.

23. Texaco's incentives concerning the level of prices and outputs of refined light products in the relevant section of the country are affected by Texaco's share of refining capacity in the Northeast region. Texaco's share of refined light product supply into the Northeast region, Texaco's ownership share of Colonial Pipeline, and Texaco's level of shipments into the Northeast region on Colonial Pipeline.

B. *Transportation of Refined Light Products*

24. One relevant line of commerce in which to evaluate the effects of the acquisition is long distance transportation of refined light petroleum products into consuming regions. Within this market, petroleum product pipelines represent another relevant line of commerce.

25. One relevant section of the country is the Northeast region composed of Maryland, Delaware, eastern Pennsylvania, New Jersey, eastern New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, and Maine.

26. Another relevant section of the country is the State of Colorado.

27. Transportation of refined petroleum products into the relevant sections of the country is highly concentrated.

28. Refinery capacity for refined light products in the State of

Colorado is not adequate to meet demand and substantial amounts of refined light products are transported into the State of Colorado.

29. There are four pipelines capable of transporting refined light products into the State of Colorado: The Wyco Pipe Line; The Medicine Bow Products Pipeline System; the Chase Pipe Line; and a pipeline owned by Phillips and Diamond Shamrock that runs from Borger, Texas, to Aurora, Colorado, near Denver.

30. The Wyco Pipe Line is jointly owned by Texaco (40 percent), Amoco (40 percent), and Mobil (20 percent). The South Line of the Wyco Pipe Line runs from Cheyenne, Wyoming, through Denver, Colorado, and terminates in Colorado Springs, Colorado.

31. The Chase Pipe Line is owned by Getty (50 percent) and Koch Oil Company (50 percent). It runs from El Dorado, Kansas to the Denver, Colorado area.

32. Texaco's incentives with respect to the level of tariffs on the Wyco Pipe Line and Chase Pipe Line are affected by Texaco's ownership share of pipelines capable of transporting refined light product into the State of Colorado.

33. Refinery capacity for refined light products in the Northeast region is not adequate to meet demand for refined light products in this relevant section of the country. The Colonial Pipeline is the dominant means of transporting additional refined light products into the Northeast region, supplying approximately 36.9 percent of total consumption of refined light products in the relevant section of the country in 1982. Four firms (Texaco, Gulf, Amoco, and CITGO Pipeline Investment Company) account for approximately 59.35 percent of ownership of the Colonial Pipeline.

34. Conditions of entry into the business of the transportation of refined light products by pipeline into the relevant sections of the country are difficult.

35. Respondents Texaco and Getty are actual competitors of each other and of other firms in the transportation of refined light products in the Northeast region. Respondent Texaco holds an ownership share of about 14.3 percent of the Colonial Pipeline. Respondent Getty owns 100 percent of the Getty Eastern Products Pipeline.

36. Tariff rates on the Colonial Pipeline are set by action of the Colonial Board of Directors.

37. Texaco's incentives concerning the level of tariffs on the Colonial Pipeline and expansion of the Colonial Pipeline are affected by Texaco's ownership share of Colonial Pipeline, Texaco's level of shipments on the Colonial Pipeline, Texaco's refining capacity in the Northeast region, and Texaco's share of petroleum product supply in the Northeast region.