

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: Timothy J. Muris, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

_____)	
In the Matter of)	
)	
SHELL OIL COMPANY,)	
a corporation,)	
)	Docket No. _____
and)	
)	
PENNZOIL-QUAKER STATE COMPANY,)	
a corporation.)	
)	
_____)	

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed merger involving Respondent Shell Oil Company and Respondent Pennzoil-Quaker State Company, hereinafter referred to as “Respondents,” and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations 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, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts as set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, 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 had reason to believe that the Respondents have violated the said Acts, and that a Complaint

should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Hold Separate and Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Shell Oil Company 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 Shell Plaza, Houston, Texas 77002.

2. Respondent Pennzoil-Quaker State Company 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 Pennzoil Place, Houston, Texas 77252.

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

I

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Atlas” means Atlas Processing Company, its officers, directors, employees, agents and representatives, successors, and assigns; its joint ventures, including, but not limited to, the Pennzoil Excel Paralubes Interest, subsidiaries, divisions, groups and affiliates controlled by Atlas; and the respective officers, directors, employees, agents, representatives, successors, and assigns of each.
- B. “Pennzoil” means Pennzoil-Quaker State Company, its officers, directors, employees, agents and representatives, successors, and assigns; its joint ventures, subsidiaries (including, but not limited to, Atlas), divisions, groups and affiliates controlled by Pennzoil; and the respective officers, directors, employees, agents, representatives, successors, and assigns of each.
- C. “Royal Dutch Petroleum” means the Royal Dutch Petroleum Company, its officers, directors, employees, agents and representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Royal Dutch Petroleum; and the respective officers, directors, employees, agents, representatives, successors, and assigns of each.
- D. “Shell” means Shell Oil Company, its officers, directors, employees, agents and representatives, successors, and assigns; its parents (including, but not limited to, Royal Dutch Petroleum), joint ventures, subsidiaries, divisions, groups and

affiliates controlled by Shell (including, but not limited to, Shell ND Company); and the respective officers, directors, employees, agents, representatives, successors, and assigns of each.

- E. “Respondents” means Shell and Pennzoil, individually and collectively, and the Person resulting from the Merger.
- F. “Acquirer” means the Person who acquires pursuant to Paragraph II or IV of this Order.
- G. “Base Oil” means paraffinic-based lubricant stock of all types, grades, viscosities, and qualities suitable for blending into finished oils (*e.g.*, passenger car motor oil, heavy duty engine oil, automatic transmission fluid, hydraulic fluids, or gear oils).
- H. “Commission” means the Federal Trade Commission.
- I. “Conoco” means Conoco Inc., 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 600 North Dairy Ashford, Houston, TX 77079, its officers, directors, employees, agents and representatives, successors, and assigns; its parents, joint ventures, subsidiaries, divisions, groups and affiliates controlled by Conoco, and the respective officers, directors, employees, agents, representatives, successors, and assigns of each.
- J. “Effective Date of Divestiture” means the date on which the applicable divestiture is consummated.
- K. “Excel Paralubes” means the joint venture formed by agreement dated August 2, 1994, between Atlas and Conoco, which produces Base Oil at a facility in Westlake, LA, and which is operated by Conoco.
- L. “Existing Customer Supply Agreements” means all agreements in effect as of the date Respondents execute the Consent Agreement, between Pennzoil and/or Atlas and any Person other than Pennzoil or Atlas for Base Oil produced by Excel Paralubes.
- M. “ExxonMobil/Pennzoil Base Oil Agreement” means the base oil supply agreement dated as of May 4, 2000, between Pennzoil and Exxon Mobil Corporation, and any amendments or successors to such agreement.
- N. “Group II Base Oil” means Base Oil that meets the necessary sulfur, saturates and viscosity index standards for Group II Base Oil established by the American Petroleum Institute, specifically (1) less than 0.03% sulfur by weight, (2) greater

than 90% saturates by weight, and (3) viscosity index 80 - 120.

- O. "Merger" means the acquisition of Pennzoil by Shell through the proposed merger of Shell ND Company and Pennzoil as described in the Agreement and Plan of Merger dated as of March 25, 2002, by and among Shell Oil Company, Shell ND Company, and Pennzoil-Quaker State Company.
- P. "Pennzoil Excel Paralubes Interest" means all of Pennzoil's and Atlas's interests in Excel Paralubes, including their partnership interest and all assets, rights, and agreements related thereto, including, but not limited to:
 - 1. All of Pennzoil's and Atlas's rights under all contracts and agreements between Pennzoil or Atlas and Excel Paralubes, including, but not limited to, the May 12, 1995, "Lubricating Base Oil Sale and Purchase Agreement between Excel Paralubes and Atlas Processing Company," and amendments thereto;
 - 2. All of Pennzoil's and Atlas's rights under all contracts and agreements between Pennzoil or Atlas and Conoco relating to Excel Paralubes; and
 - 3. All Existing Customer Supply Agreements.
- Q. "Person" means any individual, partnership, firm, trust, association, corporation, joint venture, unincorporated organization, or other business or governmental entity.

II.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest, within twelve (12) months after the date Respondents execute the Agreement Containing Consent Orders, the Pennzoil Excel Paralubes Interest to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission, absolutely and in good faith and at no minimum price.
- B. Respondents shall negotiate in good faith with the Acquirer, at Acquirer's option, an agreement not exceeding one (1) year in length, with no renewal or evergreen rights, for Respondents to purchase from the Acquirer Group II Base Oil. Such agreement shall be subject to the prior approval of the Commission.
- C. Respondents shall not, prior to the Effective Date of Divestiture, enter into any agreement or understanding with the Acquirer for Respondents to purchase Group

II Base Oil, other than an agreement as provided in Paragraph II.B. of this Order. *Provided, however*, Respondents shall give the Commission ten (10) days prior notice of the implementation of any subsequent agreement between the Acquirer and Respondents for the Respondents to purchase from the Acquirer Group II Base Oil.

- D. Respondents shall not divest the Pennzoil Excel Paralubes Interest to Conoco, and shall take all actions necessary to enforce the Letter Agreement dated August 30, 2002 between Shell and Conoco relating to Excel Paralubes.
- E. The purpose of this Paragraph is to ensure that the Acquirer is a viable independent competitor in the refining, supplying, marketing, and selling of Group II Base Oil produced by Excel Paralubes, without interruption, in the same way in which Pennzoil was engaged at the time of the announcement of the Merger, to ensure that the Acquirer has the option to enter into an agreement to supply Respondents with Group II Base Oil on competitive terms, and to remedy the lessening of competition in Group II Base Oil resulting from the proposed Merger as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. Respondents shall not submit any proposed annual volume forecast under paragraph 2(c) of the ExxonMobil/Pennzoil Base Oil Agreement that proposes or forecasts a request or lifting schedule for Group II Base Oil that exceeds 1,500 barrels per day; and
- B. Respondents shall not acquire, exercise any option to acquire, or attempt to acquire, directly or indirectly, Group II Base Oil in excess of 1,500 barrels per day pursuant to the ExxonMobil/Pennzoil Base Oil Agreement.
- C. The purpose of this Paragraph is to ensure that Respondents do not increase their share of the market for Group II Base Oil through additional supply of more than 1,500 barrels per day under the ExxonMobil/Pennzoil Base Oil Agreement, and to remedy the lessening of competition in Group II Base Oil resulting from the proposed Merger as alleged in the Commission's Complaint.

IV.

IT IS FURTHER ORDERED that:

- A. If Respondents have not, within the time period required by Paragraph II.A. of this Order, fully complied with the obligations specified in Paragraph II of this Order, the Commission may appoint a Trustee to effectuate the divestiture of the Pennzoil Excel Paralubes Interest consistent with the purpose stated in Paragraph II.E.
- B. In the event that the Commission or the United States Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Trustee in such action. Neither the appointment of a Trustee nor a decision not to appoint a Trustee under this Paragraph shall preclude the Commission or the United States Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.
- C. If a Trustee is appointed by the Commission or a court pursuant to Paragraph IV.A. or IV.B. of this Order, Respondents shall consent to the following terms and conditions regarding the Trustee's powers, duties, authority, and responsibilities:
 1. The Commission shall select that Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Trustee, Respondents shall be deemed to have consented to the selection of the proposed Trustee.
 2. Subject to the prior approval of the Commission, the Trustee shall have the exclusive power and authority to divest Pennzoil Excel Paralubes Interest as required by this Order.
 3. Within ten (10) days after appointment of the trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed Trustee, of the court, transfers to the Trustee all rights and powers necessary to permit the Trustee to effect the divestiture required by this Order.
 4. The Trustee shall have twelve (12) months from the date the Commission

approves the trust agreement described in Paragraph IV.C.3. to accomplish the divestiture, which shall be subject to prior approval of the Commission. If, however, at the end of the twelve-month period, the Trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed Trustee, by the court; *provided, however*, the Commission may extend the divestiture period only two (2) times.

5. Subject to any demonstrated legally recognized privilege, the Trustee shall have full and complete access to the personnel, books, records and facilities related to Atlas and Excel Paralubes (except Conoco's confidential information that would not have been available to Respondents) or to any other relevant information as the Trustee may request. Respondents shall develop such financial or other information as the Trustee may request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Trustee, by the court.
6. The Trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided, however*, if the Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission, *provided, further, however*, that Respondents shall select such entity within five (5) business days of receiving notification of the Commission's approval.
7. The Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as necessary to carry out the Trustee's duties and responsibilities. The Trustee shall account for all monies derived from the divestiture and all expenses incurred. After

approval by the Commission and, in the case of a court-appointed Trustee, by the court, of the account of the Trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondents, and the Trustee's power shall be terminated. The Trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the Trustee's divesting the assets to be divested.

8. Respondents shall indemnify the Trustee and hold the Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Trustee.
9. If the Trustee ceases to act or fails to act diligently, a substitute Trustee shall be appointed in the same manner as provided in Paragraph IV.C. of this Order.
10. The Commission or, in the case of a court-appointed Trustee, the court may on its own initiative or at the request of the Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.
11. The Trustee shall have no obligation or authority to operate or maintain the assets required to be divested by this Order.
12. The Trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the Trustee's efforts to accomplish the divestiture.
13. Respondents may require the Trustee to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the trustee from providing any information to the Commission.

V.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Order becomes final, and every thirty (30) days thereafter until Respondents have fully complied with Paragraphs II and IV of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they have complied, are complying, and will comply with this Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with the Order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.
- 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, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with Paragraphs II, III, IV, and VI of this Order.

VI.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in either 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.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to their principal United States offices, Respondents shall permit any duly authorized representative of the Commission:

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

in this Order; and

- B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding any such matters.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date the Order becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: