

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 ASIATIC PETROLEUM CORPORATION;)
 C. H. SPRAGUE & SON COMPANY; and)
 SPRAGUE ASSOCIATES, INC.,)
)
 Defendants.)

CIVIL ACTION NO. 70-1807-M

FILED: December 8, 1970

C O M P L A I N T

The United States of America, by its attorneys, brings this civil action to obtain equitable relief against the above-named defendants, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This Complaint is filed and this action is instituted under Section 15 of the Act of Congress of October 15, 1914, as amended, 15 U.S.C. §25, commonly known as the Clayton Act, in order to prevent and restrain violation by the defendants, as hereinafter alleged, of Section 7 of said Act, as amended, 15 U.S.C. §18.

2. Each of the defendants transacts business in the District of Massachusetts.

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II

DEFENDANTS

3. Asiatic Petroleum Corporation (hereinafter referred to as "Asiatic") is made a defendant herein. Asiatic is a corporation organized and existing under the laws of the State of Delaware and maintains its principal office in New York, New York. Asiatic is a wholly-owned subsidiary of Shell Petroleum N.V., a Netherlands company, which is one of the two principal holding companies of the Royal Dutch/Shell Group of Companies and which owns or controls about 69 percent of the outstanding common stock of the Shell Oil Company (hereinafter referred to as "Shell"). The Royal Dutch/Shell Group of Companies had consolidated assets at the end of 1968 of about \$8.8 billion and is one of the world's largest integrated oil companies. Shell is itself fully integrated and is the seventh largest oil company in the United States.

4. C. H. Sprague & Son Company is made a defendant herein. C. H. Sprague & Son Company is a corporation organized and existing under the laws of the State of Delaware and maintains its principal office in Boston, Massachusetts. It was organized on or about April 11, 1969, by Asiatic under the name Caribbean Oil Corporation (hereinafter referred to as "Caribbean") and is a wholly-owned subsidiary of Asiatic. It assumed its present name on June 9, 1969.

5. Sprague Associates Inc. is made a defendant herein. Sprague Associates Inc. is a corporation organized and

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existing under the laws of the State of Delaware and maintains its principal office in Boston, Massachusetts. Prior to June 9, 1969, Sprague Associates, Inc., was known as C. H. Sprague & Son Company. It assumed its present name when, as hereinafter alleged, substantially all of its assets were acquired by Caribbean and when, as hereinabove alleged, Caribbean assumed the name C. H. Sprague & Son Company.

6. The term "Sprague" as used herein means, for the period prior to and including June 9, 1969, the original C. H. Sprague & Son Company, now Sprague Associates, Inc., and for the period after June 9, 1969, it means the new C. H. Sprague & Son Company, formerly Caribbean.

7. Each reference herein to any defendant or to Shell shall include its subsidiaries.

III

DEFINITIONS

8. (a) Each reference herein to "New England" shall mean the states of Maine, Vermont, New Hampshire, Rhode Island, Connecticut, and Massachusetts.

(b) Each reference herein to the "tri-state area" shall mean the states of Maine, New Hampshire, and Vermont.

(c) As used herein the term "residual fuel oil" includes grades 4, 5, and 6 fuel oil.

(d) As used herein the term "distillate fuel oil" includes grades 1 and 2 fuel oil.

IV

TRADE AND COMMERCE

9. Shell, Asiatic and Sprague are engaged in the distribution and sale of fuel oil in interstate and foreign commerce. Shell produces and sells refined petroleum products, including both distillate and residual fuel oil. Asiatic purchases residual fuel oil from refineries operated by the Royal Dutch/Shell Group of Companies and sells primarily to wholesalers who operate deepwater terminals along the East Coast. Sprague operates deepwater terminals in New England and sells residual and distillate fuel oil at wholesale and at retail in that area. Prior to the acquisition of Sprague by the Caribbean Oil Corporation, Asiatic was a potential entrant in the wholesale and retail markets for residual fuel oil in New England.

10. As of December 31, 1968, Shell had total assets of \$4,229,996,000, Asiatic had total assets of \$110,294,083 and Sprague had total assets of \$29,989,570. In 1968 Shell had total revenues of \$4,007,730,000 and net profit of \$312,091,000, Asiatic had total revenues of \$365,629,327 and net profit of \$1,053,745 and Sprague had total revenues of \$40,337,221 and net profit of \$2,248,552.

11. Residual and distillate fuel oil differ from each other in various ways including end use, price and quality. Residual fuel oil is a heavier, less expensive oil used primarily for industrial heating and the generation of electric power. Distillate fuel is a lighter, more expensive oil that is used primarily for home heating.

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12. Neither residual nor distillate fuel oil is produced in New England and substantially all the residual and distillate fuel oil shipped into New England is consumed in New England. In 1968, residual fuel oil sales in New England amounted to 121 million barrels or 17.5 percent of the national total sales of residual fuel oil.

13. Sprague operates exclusively in New England, selling both residual and distillate fuel oil. Approximately 90 percent of Sprague's total physical sales volume consists of residual fuel oil. In 1968 Sprague's sales of residual fuel oil and distillate fuel oil amounted to 13,100,000 and 1,389,232 barrels, respectively.

14. In New England Asiatic imports only residual fuel oil which it sells primarily to Sprague and to other deepwater terminal operators. In 1968, Asiatic's sales of residual fuel oil in New England amounted to 14,604,000 barrels, or \$25,206,000, which was approximately 12.4 percent of the total sales of residual fuel oil into that area. In 1968, Asiatic sold 6.4 million barrels of residual fuel oil worth \$10.8 million to Sprague, representing 44 percent of Asiatic's sales in New England and approximately 50 percent of Sprague's total residual fuel oil requirements.

15. In 1968, Sprague sold 13,100,000 barrels of residual fuel oil in New England, accounting for 11 percent of the total sales of residual fuel oil in that area. Sprague's 1968 sales of 9,155,000 barrels of residual fuel oil in the tri-state area were 72 percent of total sales of residual fuel oil in that area, and its sales of 6,504,000 barrels of residual fuel oil in Maine were 73 percent of total sales of residual fuel oil in that state.

16. Substantially all of the residual fuel oil sold in New England is shipped into that area by water. Deepwater residual fuel oil terminals are therefore critical in the distribution process in New England. They serve as the funnel through which nearly all the residual fuel oil flows. With the acquisition of Sprague, there are but six independent deepwater residual fuel oil terminal operators remaining in New England. These six independent terminal operators have nine terminals with 4.4 million barrels of terminal storage or about 34 percent of the total competitive terminal capacity, and account for approximately 27 percent of all sales of residual fuel oil in New England. Eight major integrated oil companies, including Asiatic and Shell, now have approximately 66 percent of the competitive residual fuel oil terminal capacity in New England. This capacity was obtained primarily through the acquisition of independent fuel oil terminal operators.

17. With the exception of its Newington, New Hampshire terminal, all of Sprague's deepwater terminal facilities are used for the handling of residual fuel oil. Sprague's residual fuel oil terminals are located at Searsport, Bucksport and Brewer, Maine; Portsmouth, New Hampshire; and Providence, Rhode Island. These terminals account for approximately 13 percent of the total competitive deepwater terminal capacity for residual fuel oil in New England, and represented approximately 37 percent of the total independent deepwater terminal capacity for residual fuel oil in that area. In Maine and New Hampshire, Sprague has 52 percent and 100 percent,

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respectively, of total competitive deepwater terminal capacity for residual fuel oil. Sprague operated the only independent deepwater terminals in Maine, New Hampshire and Rhode Island.

18. There has been a rapid trend toward concentration into the hands of major integrated oil companies of the marketing of fuel oil in New England. Since 1959, such companies have acquired six of the larger independent terminal operators which sold both distillate and residual fuel oil in New England at wholesale and retail. In addition, since 1959 the majors have acquired five other New England deepwater terminal operators who were primarily engaged in the sale of distillates and gasoline at both the wholesale and retail level.

19. Shell, which as hereinbefore alleged is 69 percent owned by the parent company of Asiatic, competes with Sprague directly in the sale of distillate fuel oil. Such competition is particularly substantial in New Hampshire. In 1968 Sprague sold 1,105,000 barrels of distillate fuel oil in New Hampshire, accounting for approximately 15.7 percent of total sales of distillate fuel oil in that state. Shell, with 1968 sales of 307,000 barrels of distillate fuel oil in New Hampshire, accounted for approximately 4.4 percent of such sales.

V

OFFENSE CHARGED

20. On June 9, 1969, Caribbean, a wholly-owned subsidiary of Asiatic, acquired substantially all of the fuel oil distri-

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buttion assets of Sprague through a series of agreements between Caribbean and Sprague whereby Sprague (1) transferred to Caribbean all the assets and business and related contracts of Sprague's three operating subsidiaries engaged in the distribution and sale of distillate and residual fuel oil (Atlantic Terminal Sales Corporation, Lord and Keenan, Inc., and Petroleum Heat and Power Company of Rhode Island); (2) leased or subleased to Caribbean the deepwater terminals described in paragraph 17 together with all real property and other property rights, interests and improvements attached thereto, for a period of fifteen years with the option to Caribbean to purchase said assets and properties at the end of the thirteenth lease year. As a part of this transaction Sprague agreed not to compete with Caribbean in any petroleum business conducted, or proposed to be conducted by Caribbean or any of Caribbean's affiliates in New England for a period of eighteen years.

21. The effect of the acquisition by Asiatic, through Caribbean, of the assets of Sprague, with respect to the above-described trade and commerce, may be substantially to lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act, in one or more of the following sections of the country: New England, the tri-state area, the State of Maine, and the State of New Hampshire, in the following ways, among others:

(a) Potential competition between Asiatic and Sprague in the distribution and sale of residual fuel oil may be eliminated;

(b) Actual competition between Sprague and Shell in the distribution and sale of distillate fuel oil may be eliminated;

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(c) Actual and potential suppliers of residual and distillate fuel oil to Sprague may be foreclosed from a substantial segment of the market;

(d) Actual and potential purchasers of residual fuel oil from Asiatic may be foreclosed from a substantial source of supply;

(e) Sprague has been eliminated as a substantial independent competitive factor in the distribution and sale of residual and distillate fuel oil; and

(f) Competition generally in the distribution and sale of residual and distillate fuel oil may be substantially lessened.

PRAYER

WHEREFORE, the Plaintiff prays:

1. That the acquisition of Sprague's assets and operations described in paragraph 20 of this Complaint be adjudged a violation of Section 7 of the Clayton Act;

2. That the defendants herein be ordered to rescind the agreements described in paragraph 20 of this Complaint, as well as all ancillary agreements in connection therewith, and to take all appropriate action, consistent with such rescission, for the complete restoration of Sprague as a substantial independent marketer of fuel oil;

3. That pursuant to Section 15 of the Clayton Act, the Court order summons to be issued to Asiatic Petroleum Corporation, commanding it to appear and answer the allegations contained in the Complaint, and abide by and perform such orders and decrees as this Court may make in the premises;

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4. That pending a final adjudication of the merits of this Complaint, a preliminary injunction be issued enjoining defendants, their officers, directors, agents, and other persons acting on their behalf, from further consolidating or intermingling the business operations of Sprague with those of Asiatic, and from selling or otherwise disposing of any of Sprague's fuel oil marketing assets or operations, or any significant part thereof, without the consent of the plaintiff or a showing to the Court that said sale or other disposition will not affect the defendants' ability to accomplish the restoration of Sprague as a substantial independent marketer of fuel oil;

5. That the plaintiff have such other relief as the Court may deem just and proper;

6. That the plaintiff recover its taxable costs.

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