

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Standard Oil Company of California; Shell Oil Company; The Texas Company; Richfield Oil Corporation; General Petroleum Corporation; Tide Water Associated Oil Company; and Union Oil Company of California., U.S. District Court, S.D. California, 1959 Trade Cases ¶69,399, (Jun. 19, 1959)

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United States v. Standard Oil Company of California; Shell Oil Company; The Texas Company; Richfield Oil Corporation; General Petroleum Corporation; Tide Water Associated Oil Company; and Union Oil Company of California.

1959 Trade Cases ¶69,399. U.S. District Court, S.D. California, Southern Division. Civil Action No. 11584-C. Dated June 19, 1959. Case No. 1024 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Monopolies—Consent Decree—Practices Prohibited —Price Fixing —Prices Fixed by Agreement Between Competitors—”Posting” Prices—Petroleum Products.—Six oil producers in the “Pacific States Area” were each prohibited by a consent decree from (1) agreeing with any of the others to fix prices for crude oil produced in the area, (2) agreeing or offering to buy crude oil at prices referenced to those posted by any of the others and (3) posting prices for crude oil in or for any field in which it was not producing, receiving on exchange, purchasing, or seeking to purchase crude oil. The decree also prohibited the producers from agreeing with each other to fix or post prices for refined petroleum products sold in the area.

Resale Price Fixing—Consent Decree—Practices Enjoined—Agreement to Maintain Resale Prices—Resale Price Control Through Refusal to Sell—Fair Trade Contracts.—Six oil producers in the “Pacific States Area” were each prohibited by a consent decree from entering into contracts with its dealers whereby the dealers agree to resell refined petroleum products at a price designated by the producer. Each of the producers was also prohibited from forcing dealers to resell at such designated prices by threats of cancellation or threats of non-renewal of supply agreements or leases. In the absence of such threats, however, a producer was not prohibited from suggesting, urging, or persuading the dealers to resell at any price. Further, the decree did not limit a producer's right to do business with dealers of its own selection, or prevent it from exercising any right it might otherwise have had to “fair trade” all refined petroleum products other than gasoline. After five years, the decree would not prohibit a producer from fair trading gasoline.

Combinations and Conspiracies—Monopolies—Consent Decree—Practices Prohibited —Production Control.—Six oil producers in the “Pacific States Area” were each prohibited by a consent decree from agreeing with any producer to control the production of crude oil in the area with the object of fixing the price of crude oil or refined petroleum products. Each of the producers was enjoined from entering into any crude oil purchase contract, exchange agreement, or transportation agreement (1) requiring the seller to curtail his production to any quota, allotment, or production rate which was determined by any person other than the producer of the oil or a person with a right in the oil or the land from which it was produced, or (2) permitting a producer to refuse to accept crude oil produced in the area in excess of any such quota, allotment, or production rate. Also, each producer was enjoined from entering into any agreement with any other person to refuse to purchase from, transport for, or exchange with any third person crude oil produced in excess of such quota. In addition, each of the producers was prohibited from entering into or renewing any contract: for the purchase of crude oil which extended over a period of more than one year, unless such contract contained a provision giving the seller the right to terminate upon written notice.

Combinations and Conspiracies—Monopolies—Consent Decree—Practices Prohibited —Allocation of Sales Territories to Distributors.—Six oil producers in the “Pacific States Area” were each prohibited by a consent decree from requiring any “reseller distributor” in the area to refrain from selling refined petroleum

products or tires, batteries, and accessories (TBA) to any class of customers, or outside the limits of any prescribed territory, unless (1) the right to make such sales had been reserved, by written agreement, to the producer or others handling its products, or (2) the producer or one of its other distributors was then selling, or offering to sell, the products to the customers in question.

Combinations and Conspiracies—Monopolies—Consent Decree—Practices Prohibited —Exclusive Dealing—Requirements Contracts.—Four oil producers in the “Pacific States Area” were each prohibited by a consent decree from entering into agreements with their dealers whereby the dealers would agree to (1) purchase all or substantially all of their requirements of refined petroleum products or tires, batteries, and accessories (TBA) from a producer or from a source designated by it, or (2) refrain from handling refined petroleum products or TBA obtained from any other person. Also, the producers were each prohibited from selling refined petroleum products to any dealer in the area on the condition that the dealer purchase other petroleum products or TBA from it or from a source designated by it, or refrain from handling refined petroleum products or TBA obtained from any other person.

Combinations and Conspiracies—Monopolies—Consent Decree—Practices Prohibited —Boycotts—Discriminations.—Six oil producers in the “Pacific States Area” were each prohibited by a consent decree from boycotting or discriminating against others with respect to exchange agreements or other agreements for the use of pipelines or other facilities for transporting, storing, or loading crude oil or refined petroleum products. The producers were also prohibited from agreeing with each other to follow a policy or practice of refraining from entering into any lease or supply contract with a dealer unless the consent of the producer who had been supplying the dealer was obtained.

Combinations and Conspiracies—Consent Decree—Practices Prohibited—Trade Association Membership as Means of Trade Restraint.—Six oil producers in the “Pacific States Area” were each prohibited by a consent decree from holding membership in any oil producers' organization or association which sponsors programs to control the production of crude oil in the area with the objective of fixing the price of crude oil or refined petroleum products.

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief—Oil Producers' Supply Contracts with Dealers—Minimum Terms.—Six oil producers in the “Pacific States Area” were required by a consent decree to offer to their dealers, one year after entry of the decree and for a period of ten years thereafter, contracts and leases having terms of not less than three years. However, that provision applied only to dealers who were being supplied with gasoline by a producer, its assignee, or other agent and did not apply to dealers supplied through a “reseller distributor.” The producers were also required to include in those agreements provisions for termination by the dealers upon ninety days' written notice.

Department of Justice Enforcement and Procedure—Consent Decrees—Nature and Use—Duration of Decree—Effective Date.—A consent decree entered against oil producers in the “Pacific States Area” provided that, with certain exceptions, the final judgment was to take effect six months after the date of its entry and was to continue in effect for fifteen years thereafter.

Department of Justice Enforcement and Procedure—Consent Decree—Modification of Consent Decrees —Proof Required—Substantial Impairment of Ability to Compete.—A consent decree entered against oil producers in the “Pacific States Area” provided that, should any consenting defendant, upon application for modification or termination of any provision of the decree, show that its ability to compete in the area with any nonsignatory defendant was substantially impaired by reason of any provision in the decree, the court could grant such relief as it found proper.

Department of Justice Enforcement and Procedure—Consent Decrees—Scope of Decrees—Estoppel.—A consent decree entered against oil producers in the “Pacific States Area” provided that it was based upon an accord and a full compromise and settlement between the Government and the producers, as of the date of the decree's entry, of all issues raised by the charges made in the Government's complaint and its “Outline of Plaintiff's Contentions.” It was further provided that the decree, as a condition to the consent of the producers to its entry, should operate as an estoppel and bar to any charge in any proceeding instituted by the Government and based upon, or alleging, any combination, conspiracy, agreement or monopolization charged in the present action. In addition, it was provided that the decree would preclude evidence to support any claims or contentions

that, prior to the date of the decree's entry, any two or more of the producers were guilty of any of the several violations of the Sherman Antitrust Act charged in the action. Except as noted in the decree, however, it did not constitute a bar or estoppel to a suit against one or more of the producers (1) for activities occurring after entry of the decree, (2) for acts of any producer individually or in conjunction with a nondefendant, or (3) for acts of two or more of the producers which were not within the scope of the charges made in the present action.

Department of Justice Enforcement and Procedure—Consent Decrees—Permissive Provisions—Taking Action with Regard to Legislation and Regulations.—A consent decree entered against oil producers in the “Pacific States Area” provided that nothing therein should be deemed to prevent the producers from (1): taking action to induce the Federal and state governments or their agencies to take action or refrain from taking action, (2) proposing, supporting, or opposing legislation or regulation by any such government or agency, or (3) doing anything required or refraining from doing anything prohibited by the laws, regulations, or orders of the Federal or state governments or their agencies.

For the plaintiff: Robert A. Bicks, Acting Assistant Attorney General; William D. Kilgore, Jr., Baddia J. Rashid, Homer W. Hanscom, George B. Haddock, Lawrence W. Somerville, Walter M. Lehman, John H. Waters, Malcolm F. Knight, and Elliott Chaum, for the United States.

For the defendants: Marshall P. Madison, Francis R. Kirkham, Richard J. MacLaury, and William E. Mussman of Pillsbury, Madison & Sutro, for Standard Oil Co. of Cal.; S. R. Vandivort, George Harnagel, Jr., and McCutchen, Black, Harnagel & Shea (by George Harnagel, Jr.), for Shell Oil Co.; William J. De Martini, Everett B. Clary, William W. Alsup, and O'Melveny & Myers (by Everett B. Clary), for Richfield Oil Corp.; P. E. Bermingham, Howard Painter, and Dolley, Jessen & Painter (by Howard Painter), for General Petroleum Corp.; William F. Kiessig and Edmund D. Buckley (by Edmund D. Buckley), and Wayne H. Knight of Overton, Lyman & Prince (by Wayne H. Knight), for Tidewater Oil Co.; L. A. Gibbons, Douglas C. Gregg, and A. Andrew Hank (by L. A. Gibbons), and Moses Lasky of Brobeck, Phleger & Harrison (by Moses Lasky), for Union Oil Co. of Cal.

For prior opinions of the U. S. District Court, Southern District of California, see [1959 Trade Cases ¶ 69,240](#) and [1958 Trade Cases ¶ 69,212](#).

Final Judgment

[*Consent Decree*]

JAMES M. CARTER, District Judge [*In full text*]: The original complaint herein was filed by plaintiff on May 12, 1950, and an amended complaint speaking as of May 12, 1950, was filed herein on August 24, 1956, and the latter was amended on its face pursuant to order of Court filed herein on the date last mentioned. Each defendant named therein filed answers to the original and the amended complaints denying any violation of law. Plaintiff and defendants Standard Oil Company of California, Shell Oil Company, Richfield Oil Corporation, General Petroleum Corporation, Tidewater Oil Company (named as a defendant herein under its former name of Tide Water Associated Oil Company) and Union Oil Company of California, by their respective attorneys, severally consent to the entry of this Final Judgment, before the taking of any testimony and without trial., and without anything in this judgment constituting evidence or an admission by any party hereto in respect of any issue involved in this action, and the defendants not admitting that the alleged combination and conspiracy to monopolize and to restrain trade and commerce and the alleged monopolization of trade and commerce charged in the amended complaint to have existed as of May 12, 1950, ever did exist or that they have done or are doing any act or thing that they are hereafter in this judgment enjoined from doing or have refrained or are refraining from doing any act or thing that they are herein-after in this judgment required or directed to do.

[*Settlement Negotiations*]

The consent of the plaintiff and defendants signatory hereto to the entry of this Final Judgment grows out of the following described matters:

At a pre-trial hearing on March 14, 1957, the Court referred to the arguments of defense counsel that while they denied defendants had done anything wrong, they also contended that methods of operation

and conditions in the petroleum industry in the Pacific States Area had substantially changed since the filing of the complaint. After referring to the lengthy and expensive trial that would be involved, the Court asked if the parties had ever discussed the possibility of settlement. The Court was advised that there had been such discussions with some defendants but they had been abandoned because of impossibility of reaching any agreement due to plaintiff's insistence on a prohibition against retail selling by defendants, as prayed for in Prayer 17 of the amended complaint. The Court urged plaintiff and defendants to meet to explore the possibility of settlement of all or some of the issues.

The Court expressed its conviction that all of the parties were believers in the competitive system of the United States and wanted the industry to operate competitively. The Court stated that in this respect the objectives of the parties were identical. The Court urged further settlement talks and stated that they would not be considered as weakness on the part of any of the parties or as a concession that the defendants had done anything wrong.

During 1957 several such meetings were held, but at a pre-trial hearing on December 17, 1957, the Court was informed that discussions of possible settlement had again broken down because, among other things, of defendants' rejection of plaintiff's continuing demand that each defendant be enjoined from engaging in the business of selling refined petroleum products at retail, either through its own employees or by other persons designated as agents, consignees or managers, as prayed for in Prayer 17.

In May 1958, defendant Conservation Committee of California Oil Producers filed a motion for summary judgment of dismissal on the ground that the case as to said defendant had become moot by reason of changes in conditions within the oil industry and in the activities of said defendant since the filing of the original complaint in 1950. On October 24, 1958, after a hearing on said motion, the Court dismissed the case as to defendant Conservation Committee on the ground that the case had become moot as far as said defendant was concerned.

On May 29, 1958, the defendants filed a proposal that the Court consider, in the light of events occurring since the filing of the complaint, trying issues of mootness and relief before the issue of law violation. After a hearing on this proposal in July 1958, the Court deferred a ruling on such proposal, and expressed a desire to explore the type of relief that could be granted to plaintiff under Prayer 17 of the amended complaint. In Prayer 17, plaintiff sought "divestiture" and "divorcement," defining divestiture as a requirement that defendants divest themselves of all right, title and interest, whether ownership, leasehold or other proprietary interest, in service stations and other retail outlets and that they not be permitted to acquire any in the future; and defining divorcement as a requirement that the defendants now engaged in the business of selling refined petroleum products at retail either through their own employees or by agents, consignees or managers, should cease such business and that no defendant be permitted to engage in such business in the future.

The Court directed plaintiff to submit a statement setting forth in some detail the relief sought under Prayer 17 and the reasons therefor. The Court directed defendants to present their views, together with information concerning the existing situation compared to that in 1950 with respect to numbers of service stations; their locations; their relationship to suppliers; the names and numbers of non-defendant refiners and marketers; the number of stations handling their products; the areas in which they operate; the length of leases; and such other data as would give to the Court an over all picture of present marketing of refined petroleum products compared to that existing when the complaint was filed. The requested showing was to be by statement of counsel and not by way of taking of testimony, and as far as possible as an agreed presentation of the parties. All of these matters would be presented and considered on the assumption that the case had been tried on the issue of whether the antitrust laws had been violated by the defendants prior to the commencement of the action on May 12, 1950, and that the Court had found that violation had occurred. The Court announced as its purpose an effort to determine whether, on the basis of such an assumption, the Court would grant all or part of the relief sought by plaintiff in Prayer 17.

Written statements and presentations were made at a pre-trial hearing on October 28 to 31, 1958, pursuant to the Court's direction. At that hearing plaintiff generally conceded the accuracy of the showing made by counsel for defendants as to post-complaint data, as far as it went.

The Court stated that defendants had made a substantial showing of competition in marketing since 1950, both as between defendants and with new marketers entering the Pacific Coast Area since 1950 and with others; and that it was unlikely, on the basis of plaintiff's evidence as to activities of defendants occurring since 1950 and the situation existing at the present time, that plaintiff would now file a suit making those charges contained in the amended complaint herein.

On the basis of the written statements, presentations and oral arguments made during said hearing, which were not as a part of trial or the taking of testimony, the Court ruled that even if at the trial of the case it should be proved to the Court's satisfaction that the defendants had violated the law prior to May 12, 1950, the Court should not and would not grant divestiture or divorcement or relief beyond the type within the area of which the relief herein embodied falls.

The Court then again urged defendants to consult with plaintiff to see whether, in view of the foregoing ruling, further progress could be made toward disposing of all or part of this litigation. Plaintiff was charged with responsibility for arranging conferences with defendants concerning settlement. Such conferences were held and the within decree resulted.

It appears to the Court that, by reason of the aforesaid matters and the consent of the plaintiff and the defendants signatory hereto, it is unnecessary to proceed with the trial of the cause against said signatory defendants.

Now, Therefore, before any testimony has been taken herein, and without trial and without adjudication to the effect that any defendant has violated any of the antitrust laws, it is hereby Ordered, Adjudged and Decreed:

I.

[*Jurisdiction*]

The Court has jurisdiction of the subject matter of this action and of the parties signatory hereto. The amended complaint states claims for relief against the defendants and each of them under sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II.

[*Definitions*]

As used in this Final Judgment,

(a) "Consenting defendants" shall mean Standard Oil Company of California, Shell Oil Company, Richfield Oil Corporation, General Petroleum Corporation, Tidewater Oil Company and Union Oil Company of California.

(b) "Consignee" shall mean a person who, in the pursuit of an independent calling and not as an employee, is engaged by a consenting defendant as its agent to sell any of said defendant's refined petroleum products for it and at the price designated by it, and is vested by said defendant with possession or control of the product and authorized to receive payment from, the purchaser.

(c) "Consignment contract" shall mean a written agreement by which a consenting defendant engages a person to act as its consignee.

(d) "Dealer" shall mean any person who is engaged as a consignee or reseller in the business of selling gasoline at a place of business serving highway automotive vehicles of the general public, but excluding any such place of business operated by or for the government of the United States or of any state or of any political subdivision thereof, or by or for any agency or instrumentality of any such government, such as but not limited to post exchanges, commissaries and ships' stores.

- (e) "Defendants" shall mean the consenting defendants and Texaco Inc. (named as a defendant herein under its former name of The Texas Company).
- (f) "Distributor" shall mean any person who operates facilities for the storage and distribution of gasoline and who is engaged primarily in the sale of such gasoline to dealers.
- (g) "Exchange" and "exchange agreement" shall mean an agreement or arrangement whereby a person delivers crude oil or refined petroleum products to or for the account of another person at a specified place or places or at a particular time and receives in return therefor, from said other person or a third person, an amount of crude oil or refined petroleum products of approximately the same value at another place or places or at another time. The principal characteristic of an exchange is that it involves the transfer from a person to another person of possession and title to crude oil or refined petroleum products, the consideration for which is not primarily money but is the transfer to the first person of possession and title to other crude oil or refined petroleum products of approximately the same value.
- (h) "MER" shall mean "Maximum Efficient Rate," which is the highest daily rate of production which can be sustained economically from a particular pool, from existing wells and facilities, for a reasonable period without loss of economically recoverable ultimate production of oil from such pool.
- (i) "Pacific States Area" shall mean the area, comprising the states of California, Washington, Oregon, Nevada and Arizona, or any part thereof.
- (j) "Person" shall mean any individual, partnership, corporation, association or other legal entity.
- (k) "Posted prices" and "prices posted" for crude oil shall mean prices announced to the public by or for a defendant which it will pay for crude oil produced in a field or pool or area in the Pacific States Area for such crude oil as it buys.
- (l) "Posted prices" and "prices posted" for a refined petroleum product shall mean prices announced to the public by or for a defendant for the sale of such refined petroleum product in the Pacific States Area.
- (m) "Refined petroleum products" shall mean any of the following products resulting from the refining of crude oil; gasoline, lubricating oils, light and heavy fuel oils, diesel oils, stove oil, greases and kerosene.
- (n) "Reseller" shall mean any person who buys a refined petroleum product for resale, insofar as said product is concerned. As to any refined petroleum product which such person may handle under consignment contract or other arrangement not involving a purchase and resale by him, he is not deemed to be a reseller.
- (o) "Supply agreement" shall mean an agreement of purchase and sale or a consignment contract.
- (p) "Tires, batteries and accessories" shall mean replacement parts and articles used on or in the servicing or repairing of highway automotive vehicles and includes tires, tubes, batteries, spark plugs, oil filters, oil filter cartridges, fan belts, battery cables, auto lamp bulbs, fuses, windshield wipers and blades, tire repair and vulcanizing kits, anti-freeze preparations, tire chains, waxes and polishes and other like items.

III.

[*Applicability*]

This Final Judgment applicable to any consenting defendant shall be binding upon such defendant and its officers, agents, servants, employees and attorneys, and upon those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise. For the purposes of this Final Judgment a defendant and its officers, agents, servants, employees and attorneys when acting in such relationship shall be deemed to be one person.

[*Permissive Provisions*]

Nothing in this Final Judgment shall be deemed to prevent consenting defendants from jointly or severally: (i) taking action to induce the government of the United States or of any state or of any political subdivision thereof, or any agency or instrumentality of any such government or any official of any such government, agency or

instrumentality to take action or refrain from taking action; (ii) proposing, supporting or opposing legislation or regulation by any such government, agency, instrumentality or official; or (iii) doing anything required or refraining from doing anything prohibited by any law, regulation or order of the United States or of any agency or instrumentality thereof, or by any law, ordinance, regulation or order of a state or political subdivision thereof or of any agency or instrumentality of any thereof which is valid and within the competence of said state, subdivision, agency or instrumentality.

Within the meaning of this Section IV a defendant shall be deemed (a) to be required to take action even though it may have the alternative of not taking action and thereby incurring a penalty or sanction resulting from failure to comply with any law, ordinance, regulation or order of the government of the United States or any state, or any political subdivision, agency instrumentality or official thereof, and (b) to be prohibited from taking action even though it may have the alternative of taking action and thereby incurring a penalty or sanction resulting from failure to comply with any such law, ordinance, regulation or order.

V.

[*Association Membership—Production Control*]

(A) Each consenting defendant is enjoined from holding membership in or participating in the activities of any organization, association or group composed of crude oil producers or representatives of crude oil producers which sponsors, recommends or carries out any agreement or program to control the production of crude oil in the Pacific States Area with the objective of fixing or stabilizing the price of such crude oil sold in the Pacific States Area or the price of refined petroleum products refined and sold in said Area.

(B) Each consenting defendant is enjoined from agreeing with any other defendant to control the production of crude oil in the Pacific States Area with the objective of fixing the price of such crude oil sold in the Pacific States Area or the price of refined petroleum products refined and sold in the Pacific States Area.

(c) Nothing in subsections (A) or (B) of this Section V shall prevent any consenting defendant from entering into or carrying out any agreements between or among two or more defendants, or between or among one or more defendants and any other person or persons, providing for the joint leasing, joint ownership or joint operation of lands or mineral interests therein, or for the control or limitation of production for economic or other reasons from a pool or connected pools in which all the parties to the agreement are producers or have a proprietary or other financial interest, including, but not limited to, unit plans, ratable taking plans, operating agreements, pool MER agreements, well spacing agreements, secondary recovery programs and pressure maintenance programs.

VI.

[*Price Fixing—Crude Oil*]

(A) Each consenting defendant is enjoined from agreeing with any other defendant to fix prices for crude oil produced in the Pacific States Area; provided that where any defendants are parties to any purchase or sale of crude oil or to any agreement for the purchase or sale of crude oil, with or without one or more other persons, the parties to any such purchase, sale, or agreement may agree upon the price of the crude oil covered thereby.

(B) Each consenting defendant is enjoined from agreeing or offering to buy crude oil produced in the Pacific States Area at prices referenced to those posted in said area by another named defendant, unless so requested by the seller; provided, however, that nothing in this subsection (B) shall: (i) prevent a defendant in the purchase of crude oil from offering or agreeing to pay for said crude oil a price which is referenced to, or is expressed to be based upon, the highest, lowest or average of the prices posted by any two or more persons, defendants or others, who may be named; or (ii) apply to contracts in effect upon the effective date of this Final Judgment or to contracts with the government of the United States or of any state or of any political subdivision thereof or with any agency or instrumentality of any such government.

(C) Each consenting defendant is enjoined from posting prices for crude oil in or for any field in the Pacific States Area in which said defendant is not at that time producing, receiving on exchange, purchasing or seeking to purchase crude oil.

VII.

[*Boycotting Other Producers*]

Each consenting defendant is enjoined from entering into any agreement with any other defendant

(i) to adopt or pursue any continuing system or practice of extending to other defendants discriminatory treatment as compared to that extended to nondefendants, or

(ii) to boycott any nondefendants with respect to exchange agreements or other agreements for the use of pipelines or other facilities in the Pacific States Area for transportation, storage or loading of crude oil or refined petroleum products.

In the construction or application of this Section VII it shall be recognized that exchange agreements and agreements for the use of pipelines or other facilities do or may involve different types of crude oil or refined petroleum products, different types of pipelines and different transportation, storage or loading facilities, and that such agreements are entered into at different times when the situation of a party having pipelines or other facilities is or may be different with respect to its own needs or capacities, and that every such actual or suggested agreement and its terms involves complex elements of business judgment.

VIII.

[*Purchase Contracts—Time Period*]

(A) Each consenting defendant is enjoined from entering into or renewing any contract for the purchase of crude oil produced in the Pacific States Area the term of which extends for a period of longer than one year unless such contract contains a provision giving the seller the right to terminate such contract upon written notice, the length of which shall be set forth in the contract, but no notice of more than twelve months shall be required except that a notice of up to five years may be required in a contract for the purchase of crude oil from one seller, or group of sellers having a common interest in the crude oil being sold, which obligates the buyer to accept more than 2,000 barrels of crude oil per day; provided: (i) that exercise of such rights of termination may be limited to cases in which the contract is terminated by the seller for the purpose of refining the crude oil himself or selling the crude oil covered thereby to a nondefendant; and (ii) that in any instance in which a consenting defendant is required by its crude oil purchase contract or another related contract to supply crude oil or petroleum products to or for the account of the seller or a subsidiary or affiliate of the seller the term of the crude oil purchase contract may continue as long as the obligation to supply such crude oil or petroleum products continues.

(B) The provisions of this Section VIII shall not apply to contracts: (i) between a consenting defendant and persons with whom said consenting defendant has a joint or concurrent proprietary or other financial interest in lands within a pool or field, or in crude oil produced from a pool or field, for the purchase or sale of crude oil produced within such pool or field, including but not limited to contracts with lessors of a consenting defendant, co-lessees, joint venturers, owners of royalty or overriding royalty interests or participating interests, and parties to unit and other operating agreements, “farm-out” arrangements and oil payment agreements; or (ii) with the government of the United States or of any state or of any political subdivision thereof or any agency or instrumentality of such government.

IX.

[*Production Control*]

(A) Each consenting defendant is enjoined from entering into any crude oil purchase contract, exchange agreement or transportation agreement which (a) requires the seller to curtail his production of crude oil in the

Pacific States Area to any quota, allotment or production rate determined, suggested or recommended by any person or persons other than (i) the producer of said crude oil or (ii) any person or persons having a right, title or interest in said crude oil or the lands from which it was produced, or (b) permits a consenting defendant to refuse to accept crude oil produced in said Area in excess of any such quota, allotment or production rate.

(B) Each consenting defendant is enjoined from entering into or carrying out any agreement with any other person to refuse to purchase from transport for or exchange with a third person crude oil produced in the Pacific States Area in excess of any such quota, allotment, production rate or recommended production rate.

(C) Nothing in this Section IX shall prevent any consenting defendant (i) who is a producer or has any proprietary or other financial interest in any pool or connected pools from agreeing with any other person who is a producer or has any proprietary or other financial interest in such pool or connected pools to refuse (or from including in its crude oil purchase contracts, exchange agreements or transportation agreements provisions permitting it to refuse) to purchase, exchange or transport crude oil produced in excess of a seller's fair share of the MER of such pool or connected pools; or (ii) from agreeing in any contract upon the quantity of crude oil to be purchased, exchanged or transported by the parties thereunder.

X.

[Price Fixing—Refined Products]

Each consenting defendant is enjoined from agreeing with any other defendant (i) to fix prices for refined petroleum products sold in the Pacific States Area or (ii) that any defendant will post prices or will adhere to its posted prices for the sale of refined petroleum products in the Pacific States Area; provided that where any defendants are parties to any purchase or sale or any agreement for the purchase or sale of refined petroleum products, with or without one or more other persons, the parties to any such purchase, sale or agreement may agree upon the price of the refined petroleum products covered thereby.

XI.

[Resale Price Fixing]

Each consenting defendant is enjoined from entering into or adhering to any agreement with any reseller by which said reseller agrees to resell, or from forcing any such reseller by threatening him with cancellation or nonrenewal of a supply agreement or lease to resell; in the Pacific States Area, any refined petroleum product at a price, or at not less than a minimum price, or at not more than a maximum price, designated by such defendant; provided that this Section XI shall not prevent a consenting defendant, in the absence of such a threat, from suggesting to a reseller of its petroleum products a resale price for any of such products, or from urging or persuading such reseller to resell any of such products at any price; nor shall anything in this Section XI limit in any way (i) the rights of a consenting defendant set forth in subsections (E), (G), and (H) of Section XII or (ii) the right of a consenting defendant to do business with resellers of its own selection whether as lessor, supplier, or otherwise.

Provided that as to all refined petroleum products other than gasoline, this Section XI shall not prevent any consenting defendant from exercising, and as to gasoline shall not prevent any consenting defendant after five years from the effective date of this judgment from exercising, any right it may have, but for this Section XI, (1) to fair trade any product, or (ii) to fix, maintain or enforce by agreement or otherwise the price, or the maximum or minimum price, at which any product may be resold; and

Provided further, that in view of pending litigation between the plaintiff and other parties which plaintiff believes to have a bearing on the legality of action of the type referred to in this further proviso, this Final Judgment shall not have any application to any consenting defendant's granting, increasing, decreasing or withdrawing an allowance or price reduction to a reseller, whether in the form of a rebate, subsidy or otherwise, which is based, calculated or conditioned by such consenting defendant upon the amount or level of a resale price established by such reseller in the exercise of his own decision and choice; and in any future suit, proceeding, or litigation instituted by plaintiff this Final Judgment shall not operate as a bar or estoppel against any charge

that such action violates the antitrust laws except to the extent that such charge may fall within the provisions of subsection (A) of Section XVI of this Final Judgment.

XII.

["Dealer" Arrangements]

As used in this Section XII the term "lease" means "lease or sublease," the term "lessee" means "lessee or sublessee," and "dealer" means a dealer as defined in Section II who sells gasoline under the brand of the consenting defendant supplying him.

(A) Each consenting defendant is required and directed (i) to offer to each dealer operating at any location in the Pacific States Area where he is being supplied with gasoline by such defendant or its consignee or other agent and not through a reseller distributor and (ii) to grant to each such dealer who accepts such offer a supply agreement wherein such defendant undertakes to supply such dealer with gasoline for sale at such location. Each such agreement shall be for a term of at least three years; provided that the term of any such agreement relating to any such location may be for less than three years if it is concurrent with the term of any lease of such location which may properly be made for a term of less than three years under paragraph (4) of subsection (B) of this Section XII; and provided, further, that each such agreement with a dealer who, with the consent of such defendant, as a dealer occupies premises owned or leased by such defendant, shall contain a provision granting to such dealer a right to terminate said agreement upon ninety days' written notice.

(B) Each consenting defendant is required and directed insofar as it has the right to do so (i) to offer or cause to be offered to each dealer who, with the consent of such defendant, as a dealer occupies premises owned or leased by such defendant in the Pacific States Area and (ii) to grant or cause to be granted to each such dealer who accepts such offer a lease of such premises having a term of at least three years, with provision for right of termination by such dealer upon ninety days' written notice; provided that no consenting defendant is required or directed:

(1) To offer or grant or cause to be offered or granted any lease of any premises to any dealer who is not required by such defendant to assume a rental obligation with respect to such premises;

(2) To make or cause to be made a lease with any dealer unless such dealer concurrently enters into an agreement with such defendant as contemplated by subsection (A) of this Section XII;

(3) To offer or grant or cause to be offered or granted a lease to a dealer supplied by a reseller distributor; or

(4) Where such defendant itself holds any such premises as lessee and not as owner, to offer or grant or cause to be offered or granted any lease of such premises for a term extending beyond the thirtieth day preceding the expiration of the term of the lease under which such defendant holds the premises at the time of such offer or grant; and in any such instance, such defendant may satisfy the requirements of this subsection (B) by offering or causing to be offered, and if the offer is accepted granting or causing to be granted, a lease for a term of less than three years, provided such term expires not earlier than such thirtieth day.

(C) In all instances where any consenting defendant offers or causes to be offered such an agreement or such a lease to any dealer and such dealer rejects such offer, or does not accept it within 15 days, or having accepted it fails within 5 days after such acceptance to enter into the agreement or lease offered to it, nothing herein shall require such defendant to renew said offer or cause it to be renewed at any time, or at any time to offer or cause to be offered to such dealer any other agreement or lease relating to said premises; and the preceding subsections (A) and (B) of this Section XII shall thereafter be inapplicable to any dealing between such defendant and such dealer at said premises.

(D) Each such agreement and each such lease may provide in substance or effect (i) that the supply obligation of the defendant party thereto need not exceed half the dealer's requirements as of the date of the agreement or lease for use or sale at the location to which it relates (subject to pro-ration in case of shortage) and (ii) that deliveries thereunder may be suspended and/or that it may be terminated by the defendant party thereto at any time prior to the expiration of its stated term, upon written notice stating the grounds therefor given to the dealer

in the manner specified in the agreement or lease (or automatically or without notice in such cases as death, incompetency or insolvency, for the breach of any provision thereof or upon the occurrence of any other event or condition specified therein not prohibited by Section XI or Section XIV of this Final Judgment. Where a dealer holds such an agreement and such a lease covering the same location each or either of them may provide in substance or effect that a breach of one shall constitute a breach of the other and/or that the cancellation or termination of one shall be effective to cancel or terminate the other.

(E) Each such lease and each such supply agreement with a dealer who has not been operating as a dealer in the gasoline of the defendant supplying him at the location therein referred to for a period of twelve months immediately prior to the execution of the same may contain a provision granting to the lessor or supplier the right to terminate the same without cause upon thirty days' written notice of termination at any time within twelve months after the date such dealer began operating as a dealer in the gasoline of said defendant at such location. For the purposes of this subsection (E) it shall be deemed there is a new dealer at the location whenever a new person commences operating at such location.

(F) Nothing in this Section XII shall require that the price or prices payable under or the commission rates provided for in any supply agreement shall remain constant throughout the term of such agreement; and nothing in this Section XII shall prevent the inclusion in any lease of a provision for changes in rental if the circumstances under which said changes in rental shall be made are specified in the lease and the amount of said changes in rental is determinable by the terms of the lease.

(G) The provisions of this Section XII shall not take effect until one year after the date of entry of this Final Judgment and shall apply only in respect of dealers who may be within the terms of this Section XII on or after the effective date of this Section XII. It is 'understood that each consenting defendant is now supplying many dealers on a spot basis, or under supply contracts having less than a three-year term, with whom 'such defendant may be unwilling to enter into a supply agreement or a lease having a three-year term.

(H) Nothing in this Section XII shall prevent any consenting defendant from: (i) declining or failing to renew or cause to be renewed for any reason any supply agreement or lease upon the expiration or termination thereof, or from advising the dealer of the reason or reasons therefor a reasonable time in advance of such expiration or termination; provided that if, after the expiration or termination of any such supply agreement or lease, a consenting defendant or its consignee or other agent continues thereafter for more than three months to supply such dealer with gasoline at such location or to permit such dealer to occupy premises owned or leased by such defendant, then this Section XII shall again apply to such dealer; or (ii) discontinuing to supply gasoline to any dealer for any reason or terminating any supply contract or lease for any reason (I) within one year from the date of entry of this Final Judgment.

(I) The provisions of this Section XII shall terminate ten years after the date of entry of this Final Judgment, provided that this subsection (I) shall not be deemed to affect the terms of any agreement or lease executed prior to the end of such ten-year period.

XIII.

["Distributor" Agreements]

Each consenting defendant is enjoined:

(A) From including in any supply contract or in any agreement executed in connection with the making of a supply contract with any reseller distributor in the Pacific States Area a provision granting to such defendant an option or right to purchase or rent from such distributor any of such distributor's properties, facilities or equipment used or usable in the handling or distribution of refined petroleum products, and from exercising after the effective date of this Final Judgment any such option or right in any such contract or agreement then existing; provided that a consenting defendant (i) may contract for and exercise a right of first refusal, with respect to offers made or received by a distributor while his supply contract is in effect, to purchase or lease any of such distributor's properties, facilities or equipment and (ii) may take and enforce security rights in properties, facilities or equipment of a distributor.

(B) From requiring any reseller distributor in the Pacific States Area to refrain, or agreeing with any such reseller distributor that such distributor shall refrain, from selling or offering to sell any refined petroleum products or tires, batteries, or accessories to any existing or prospective customer or customers or classes of customers or outside the limits of any prescribed territory, unless said defendant, by written agreement with said distributor, reserves or has reserved for itself or for others handling such defendant's products the right to make such sales of said products or any of them or unless said defendant or another distributor of said defendant is then selling or offering to sell said product or products to the customer or customers in question.

XIV.

[*Requirements Contracts—Exclusive Dealing*]

Each of the consenting defendants other than Standard Oil Company of California and Richfield Oil Corporation is enjoined:

(1) From entering into or enforcing the provisions of any agreement with any dealer reseller in the Pacific States Area, or forcing any such dealer to enter into any agreement, whereby such dealer agrees

(i) to purchase from said defendant or from a source designated by said defendant all or substantially all of such dealer's requirements of any refined petroleum product or of tires, batteries, or accessories, or

(ii) to refrain from handling refined petroleum products or tires, batteries or accessories obtained from any other person;

(2) From selling any refined petroleum product to any dealer in the Pacific States Area on the condition

(i) that said dealer shall purchase other petroleum products or tires, batteries or accessories from said defendant or a source designated by said defendant;

(ii) that said dealer shall not sell or handle refined petroleum products or tires, batteries or accessories obtained from any other person;

Provided that any consenting defendant may require that any pump or tank or other container or receptacle for refined petroleum products or for tires, batteries or accessories furnished by it and marked as such to a dealer shall be used solely for the storing, handling or dispensing of such products supplied by such defendant or source designated by such defendant, and may prescribe by agreement or regulations not inconsistent with this Section XIV for the storage, handling or dispensing of such products.

Provided, further, that any consenting defendant may limit use of its credit cards to whatever merchandise it chooses.

XV.

[*Boycotting Dealers*]

Each consenting defendant is enjoined from agreeing with any other defendant to follow a policy or practice of refraining from entering into any lease or supply contract with a dealer in the Pacific States Area unless consent is obtained from another defendant who has been or is currently supplying refined petroleum products to such dealer; provided that this Final Judgment shall not prevent such a defendant who is considering the solicitation or acceptance of a dealer supplied by another defendant or other person from making inquiry of such defendant or person to ascertain the existence and terms of any lease, contract, liens, mortgages or the like to which the dealer is a party or to which he is subject.

XVI.

[*Estoppel*]

(A) This Final Judgment is based upon an accord and a full compromise and settlement between plaintiff and the consenting defendants as of the date of entry of this Final Judgment of all issues raised by the charges made in the amended complaint herein and by the Outline of Plaintiff's Contentions filed herein on

January 10 and February 4, 1957. This Final Judgment shall operate (and it is a condition to the consent of the consenting defendants to this Final Judgment, and this condition is agreed to by plaintiff, that this Final Judgment shall operate) as an estoppel and bar to any charge in any suit, proceeding or litigation instituted by plaintiff based upon or alleging: (i) any combination, conspiracy or agreement between two or more defendants, or monopolization, charged in the amended complaint or alleged in the aforesaid Outline of Plaintiff's Contentions; (ii) any continuation of such combination, conspiracy, agreement or monopolization ; (ii) the effects or continued effects of any such combination, conspiracy, agreement or monopolization; or (iv) that any acts were done in furtherance of or pursuant to any such combination, conspiracy, agreement or monopolization or in the exercise of or aided by the monopoly power resulting from such combination, conspiracy, agreement, or monopolization. This Final Judgment shall preclude evidence to support any claims or contentions that prior to the date of entry hereof any two or more defendants jointly possessed such monopoly power or were otherwise guilty of any of the several violations of section 1 and 2 of the Sherman Act referred to above.

(B) This Final Judgment shall not constitute a bar or estoppel (and it is a condition to the consent of plaintiff to this Final Judgment, and this condition is agreed to by consenting defendants, that this Final Judgment shall not constitute a bar or estoppel) other than the bar and estoppel referred to in subsection (A) of this Section XVI, to any suit, proceeding or litigation which may hereafter be instituted by plaintiff against any one or more of said defendants: (i) for activities occurring after the date of entry of this Final Judgment; (ii) for acts of any defendant individually or in conjunction with a nondefendant including but not limited to acts or practices in the retail marketing of refined petroleum products; or (iii) for acts of two or more defendants not within the scope of the charges made in the amended complaint or alleged in the aforesaid Outline of Plaintiff's Contentions.

XVII.

[*Enforcement and Compliance*]

For the purpose of securing compliance with this Final Judgment and for no other purpose duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on notice reasonable as to time and subject matter given to any consenting defendant at its principal office, be permitted, subject to any legally recognized privilege:

(A) Access in the presence of such defendant's counsel and other representatives, during the office hours of such defendant, to those parts of the books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant which relate to any matters contained in this Final Judgment.

(B) To interview officers or employees of such defendant, subject to the reasonable convenience of such officers and employees and of such defendant, and without interference or restraint from it, regarding any such matters, at which interviews counsel for the officer or employee interviewed and counsel for such defendant may be present.

(C) To require a consenting defendant to submit reports in writing with respect to any matters or activities of such consenting defendant as the Department of Justice considers may constitute a possible violation by said defendant of Section XI of this Final Judgment.

No information obtained by the means provided in this Section XVII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment.

XVIII.

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the Court at any time for such further orders or directions as may be necessary or appropriate for the construction or

carrying out of this judgment, for the enforcement of compliance therewith, for punishment of violations thereof, and for the purpose of enabling any consenting defendant to move the Court for a protective order in respect of any request and notice by plaintiff under Section XVII.

Should any consenting defendant, upon application for modification or termination of any provision of this Final Judgment, with due notice to plaintiff and opportunity to be heard thereon, show to the satisfaction of the Court that the ability of such consenting defendant to compete in the Pacific States Area with any nonsignatory defendant is substantially impaired by reason of any provision of this Final Judgment, the Court may grant such relief to said defendant as it finds proper.

XIX.

[*Effective Date—Continuation*]

Except as otherwise provided in Section XII, this Final Judgment shall take effect six months after date of entry and shall continue in effect for fifteen years thereafter.