UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

FEDERAL TRADE COMMISSION,

Plaintiff,

PAUL L. FOSTER,
WESTERN REFINLNG, NC.,

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Case No. 1 1

ofthe FTC Act, 15 U.S.C. 5 45, and Sections 7 and 11 of the Clayton Act, 15. U.S.C. 55 18 and 21; and alleges:
I.
JUIUSDICTIONAND VENUE

1. Jurisdiction is based upon Section 13(b) of the FTC Act, 15 U.S.C. 5 53@), and
upon 28 U.S.C. $5 1337 and 1345. Tlus is a civil action arising under Acts of Congress protecting txade and commerce against restraints and monopolies, and is brought by an agency of the United States authorized by an Act of Congress to bring this action. Venue is proper under Section 13@) ofthe FTC Act, 15 U.S.C. 5 53(b), under 28 U.S.C. F) 1391(b) and (c), and under Section 12 of the Clayton Act, 15 U.S.C. 5 22.
2. Defendants are engaged in commerce, as "commerce" is defined in Section 4 of
the FTC Act, 15 U.S.C. 5 44, and Section 1 of the Clayton Act, 15 U.S.C. 5 12. Western and Giant supply gasoline and diesel fuel throughout northern New Mexico and within this District. Western and Giant are engaged in, among other things, the refining and bulk supply of gasoline to consumers in northern New Mexico.
11.
THE PARTIES
3. The Commission is an

4. Defendant Paul L. Foster is an individual doing business at 6500 Trowbridge
Drive, El Paso, Texas 79905. Mr. Foster is the ultimate parent entity of Western Refining, Inc.
5. Defendant Western Refining, Inc. is a Delaware corporation headquartered at
6500 Trowbridge Drive, El Paso, Texas 79905. Western is an independent crude oil reher and marketer of rehed products and operates primarily in the Southwest region of the United States, including Arizona, New Mexico, and west Texas.
6. Defendant Giant Industries, Inc. is a Delaware corporation headquartered at 23733
North Scottsdale Road, Scottsdale, Arizona, 85255. Giant is an independent crude oil refiner and marketer of refined products and operates primarily in Virginia, Maryland, North Carolina, New Mexico, Arizona, and Colorado.
III.

SECTION 13@) OF THE FTC ACT
7. Section 13(b) of the FTC Act, 15 U.S.C. 5 53@), provides in pertinent part:
(b) Whenever the Commission has reason to believe -
(1) that any person, partnership, or corporation is violating,
or is about to violate, any provision of law enforced by the
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temporary restraining order or a preliminary injunction may be granted
without bond . . . .

IV.
THE PROPOSED ACQUISITION AND THE COMMISSION'S RESPONSE
8. Pursuant to an Agreement and Plan of Merger, by and among Western, Giant, and "New Acquisition Corporation," a wholly-owned subsidiary of Western, dated August 26,2006, Western agreed to acquire Giant for approximately $1.4 billion in cash. The agreement was subsequently amended on November 12,2006 (the "Acquisition"). Upon completion of the Acquisition, Giant will become a wholly-owned subsidiary of Western.
9.

of the FTC Act because the Acquisition may substantially

distribution services to wholesale customers from light petroleunl product terminal tanks located at such refineries.
VI.
LIMITED NUMBER OF BULK SUPPLIERS TO NORTHERN NEW MEXICO

16. Giant owns and operates two refineries, and their adjacent terminals, in northern
New Mexico, one in Bloodeld and the other in Ciniza, from which it supplies bulk gasoline
and diesel fuel to New Mexico, Arizona, Utah, and Colorado. Giant also owns a petroleum
products terminal in Albuquerque, from which it supplies bulk gasoline and diesel fuel to
northern New Mexico.

17. Giant supplies its Albuquerque product terminal by truck from .l393yant supp3.90Tc -31.977 -20

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As a result, by regulated tariff, the pipeline allocates only five percent of the pipeline's total volume to potential new slippers. Consequently, the volume available to any one individual new shipper is limited to a maximunl of about 350 barrels per day.
20. Holly

Valero's refinery and terminates at ConocoPlullips' and NuStarNalero L.P.'s storage terminals in Albuquerque. ConocoPlullips' Borger refinery and Valero's McKee refinery are the only two suppliers with access to the ATA Pipeline to Albuquerque.
23. Two other firms also supply northern New Mexico with gasoline products via
pipeline. Only one of these two firms can increase its bulk supply of gasoline to northern New Mexico in response to a small output decrease fiom the other five significant bulk suppliers (Giant, Westem, ConocoPhillips, Valero, and Holly).
VII.
THENATUREOF COMPETITION
24. Although there are seven current bullc suppliers of gasoline to northern New
Mexico, only six of these suppliers, including Giant, Western, ConocoPhillips, Valero, and Holly, are currently capable of responding to a small decrease in the volume of gasoline supply to Albuquerque terminals, and thus should be counted as bullc supply competitors for gasoline sales to northern New Mexico.

25. Holly, ConocoPhillips, and Valero are large bullc suppliers of gasoline with large
refineries in or near New Mexico connected to pipelines with significant unused capacity running to the Albuquerque area. However, limited supply responsiveness suggests these firms are unlikely to competitively constrain any small output reduction or price increase for gasoline aRer the Acquisition.
26. The unavailability of additional shipping space on the Plains Pipeline for current
shippers and the unavailability of economically viable volume on that pipeline for new shippers, increases the lilcelihood that there would be little or no supply response fiom the other relevant

suppliers to Albuquerque to a future small reduction by the combined WestemIGiant in the supply of gasoline to northern New Mexico.
WI.
&SENT ITS ACQUISITION BYWESTERN, GIANT WILL SOON INCREASE THE SUPPLY OF GASOLINE TO NORTHERN NEWMEXICO
27. Giant's two New Mexico refineries are landlocked and currently depend on a decli~li~lglocal crude oil supply. The reduction in crude supply has forced Giant to reduce the rate at which its refineries can refine crude oil into light petroleum products by about 30 percent over the last ten years.
28. In 2005, in an

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petroleum products, including gasoline, in northern New Mexico

X.
LII<ELIHOOD OF SUCCESS ON THE MERITS AND NEED FOR RELIEF

33. Western's acquisition of Giant is an acquisition of "all or part of the stock" and
"all or any part of the assets" of Giant, within the meaning of Section 7 of the Clayton Act,
15 U.S.C. S, 18.
34. The Commission is lilcely ultimately to succeed in demonstrating, in
administrative proceedings to adjudicate the legality of the proposed Acquisition, that the
proposed Acquisition would violate Section 7 of the Clayton Act and Section 5 of the FTC.3603 Tm�(X. �)Tt85 0 T is an lcely theadction

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d. The effect of the proposed Acquisition, if consummated, may be
substantially to lessen competition in the relevant marlcet by, among other things:
(i) The Acquisition would combine two of tl~e six significant bullc
suppliers of gasoline to northern New Mexico, substantially increasing
concentration in an already Iugldy concentrated marlcet for the bullc supply
of gasoline to northern New Mexico, would eliminate the existing
substantial competition between Western and Giant, and would
substantially reduce competition in the bullc supply of gasoline to northern New Mexico.

(ii) The Acquisition would eliminate Giant as a "maverick" in the bulk supply of gasoline to northern New Mexico, creating a combined firm with reduced incentives to expand its supply of gasoline to northern New Mexico.

(iii) The Acquisition increases t11e lilcelihood that Western will reduce the amount of gasoline it supplies to northern New Mexico. The other bullc suppliers of light petroleum products are unlikely to respond in a way to make Western's output reduction unprofitable.
(iv) The Acquisition increases the lilcelihood of competitor coordination in the bullc supply of gasoline. Following the Acquisition, Western could more easily coordinate profitably wit11 one or more of the few remaining significant bulk suppliers of gasoline to restrict output or raise prices.

e. Substantial and effective entry into the ielevant market is difficult.
35. The reestablislment of Western and Giant as independent viable competitive entities if they were to merge would be difficult, and it likely would be difficult, if

Dated: April 30,2007

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CERTIFICATE OF SERVICE

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