

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
c/o Department of Justice
Washington, D.C. 20530,
Plaintiff,

v.

ATLANTIC RICHFIELD COMPANY,
515 South Flower Street,
Los Angeles, California 90071

and

U.F. GENETICS, INC.,
a\k\ a SUNSEEDS GENETICS, INC.,
a\k\ a S.S. GENETICS INC.,
a Delaware corporation,
c/o R. Matthew Neil & Co.
820 Bay Avenue, Suite 107
Capitola, California 95010
Defendants.

DEC 2 6 1991

Civil Action No.

91 3267

COMPLAINT FOR CIVIL PENALTIES FOR VIOLATION OF PREMERGER
REPORTING REQUIREMENTS OF THE HART-SCOTT-RODINO ACT

The United States of America, Plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States and at the request of the Federal Trade Commission, brings this civil action to obtain monetary relief in the form of a civil penalty against the Defendants named herein, and alleges as follows:

1. This Complaint is filed and these proceedings are instituted under section 7A of the Clayton Act, 15 U.S.C. § 18a, commonly known as Title II of the Hart-Scott-Rodino Antitrust

Improvements Act of 1976 ("HSR Act" or "Act") to recover a civil penalty for violating the HSR Act.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the Defendants and over the subject matter of this action pursuant to Section 7A(g) of the Act, 15 U.S.C. § 18a(g), and 28 U.S.C. §§ 1331, 1337(a), 1345 and 1355.

3. Venue in this District is proper pursuant to 28 U.S.C. §§ 1391(b), 1391(c), 1395(a) and Section 12 of the Clayton Act, 15 U.S.C. § 22. Venue is also proper by virtue of the Defendants's consent to the maintenance of this action in this District.

4. Defendants ARCO and U.F. Genetics at all times pertinent to this proceeding were engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 7A(a)(1) of the Act, 15 U.S.C. § 18a(a)(1).

5. Defendants ARCO and U.F. Genetics, and ARCO Seed, at all times pertinent to this proceeding, had sufficient total assets above the thresholds established by the HSR Act and regulations promulgated thereunder, 16 C.F.R. § 800 et seq., ("HSR Rules" or "Rules").

THE DEFENDANTS

6. Defendant Atlantic Richfield Company ("ARCO") is incorporated in the state of Delaware with its principal place of business at 515 South Flower Street, Los Angeles, California, 90071. At all times pertinent to this proceeding, ARCO had total assets in excess of \$100 million.

7. Defendant U.F. Genetics, Inc., also known as Sunseeds Genetics, Inc. and S.S. Genetics Inc. ("U.F. Genetics"), was, at all times pertinent to this proceeding, a Delaware corporation with its principal offices located at 2320 Technology Parkway, Hollister, California, 95024. U.F. Genetics was a breeder, developer, producer, and distributor of a broad line of hybrid vegetable seed varieties for domestic and international growers. At all times pertinent to this proceeding, U.F. Genetics had total assets in excess of \$10 million. U.F. Genetics filed a petition for relief under Chapter 11 of the Bankruptcy Code on February 2, 1990, in the United States Bankruptcy Court for the Northern District of California, Case No. 590-00502-ASW. At the time of the filing of this Complaint, U.F. Genetics is a debtor and debtor in possession. For the purposes of this Complaint U.F. Genetics includes AS Purchasing Corp., a U.F. Genetics subsidiary created for the purpose of acquiring ARCO Seed Company.

ARCO SEED COMPANY

8. ARCO Seed Company ("ARCO Seed") was, at all times pertinent to this proceeding, a California corporation with its principal place of business at 110 East Ross Avenue, El Centro, California, 92243 and was a wholly owned subsidiary of ARCO. ARCO Seed was a developer and marketer of vegetable, field and flower seeds. At all times pertinent to this proceeding, ARCO Seed had total assets in excess of \$25 million.

THE HART-SCOTT-RODINO ACT

9. The HSR Act requires certain acquiring persons and certain persons whose voting securities or assets are acquired to file notifications with the Department of Justice and the Federal Trade Commission and to observe a waiting period before consummating certain acquisitions of voting securities or assets. 15 U.S.C. § 18a(a) and (b). The notification and waiting period are intended to give those federal antitrust agencies prior notice of, and information about, proposed transactions. The waiting period is also designed to provide the antitrust agencies an opportunity to investigate proposed transactions and determine whether to seek an injunction to prevent transactions that may violate the antitrust laws. Pursuant to Section 7A(g)(1) of the Act, 15 U.S.C. § 18a(g)(1), any person who fails to comply with any provision of the Act shall be liable to the United States for a civil penalty of not more than \$10,000 per day for each day during which that person is in violation.

10. Section 7A(a)(3) of the Act requires notification for an otherwise reportable acquisition of voting securities "if as a result of the acquisition, the acquiring person [here Defendant U.F. Genetics] would hold -- (A) 15 per centum or more of the voting securities or assets of the acquired person [here ARCO Seed]" 15 U.S.C. § 18a(a)(3).

11. Section 801.1(c) of the HSR Rules defines the term "hold" as "beneficial ownership." 16 C.F.R. § 801.1(c).

12. Section 7A(b)(3)(A) of the HSR Act defines the term "voting securities" as "any securities which at present or upon conversion entitle the owner or holder thereof to vote for the election of directors of the issuer" 15 U.S.C. § 18a(b)(3)(A).

13. Section 802.20(b) of the HSR Rules exempts from prior notification and waiting requirements certain acquisitions of voting securities valued at less than \$15 million which otherwise are made reportable by Section 7A(a)(3) of the Act. Such acquisitions are exempt if the acquiring person (here Defendant U.F. Genetics) or the acquired person (here Defendant ARCO and ARCO Seed) can show either (1) that, as a result of the acquisition, the acquiring person "would not hold voting securities which confer control" of the issuer of the voting securities (here ARCO Seed), or (2) that the issuer had less than \$25 million in annual net sales or total assets. One holds voting securities which confer control if one has beneficial

ownership of 50 percent or more of the outstanding voting securities of the issuer being acquired.

VIOLATION ALLEGED

14. The allegations contained in Paragraphs 1 through 13 are repeated and realleged as though fully set forth here.

15. On December 29, 1986, U.F. Genetics entered into a Stock Purchase Agreement with ARCO to acquire 100 percent of the issued and outstanding common stock of ARCO Seed ("Stock Purchase Agreement").

16. On December 29, 1986, pursuant to the Stock Purchase Agreement, U.F. Genetics entered into ancillary agreements with ARCO, including an "Escrow and Pledge Agreement" and "Shareholders Voting Agreement" (collectively "Ancillary Agreements").

17. On December 29, 1986, ARCO transferred and delivered 100 percent of the then issued and outstanding common stock of ARCO Seed to U.F. Genetics and to an escrow agent, pursuant to the Stock Purchase Agreement.

18. On December 29, 1986, ARCO transferred to U.F. Genetics, and U.F. Genetics received, 49 percent of the outstanding common stock of ARCO Seed, which represented 49 percent of the outstanding voting securities of ARCO Seed, pursuant to the Stock Purchase Agreement.

19. On December 29, 1986, ARCO transferred to U.F. Genetics, and U.F. Genetics received, the immediate and permanent

right to vote the remaining 51 percent of the voting securities of ARCO Seed, pursuant to the Shareholders Voting Agreement.

20. On December 29, 1986, the remaining 51 percent of the outstanding common stock were transferred and delivered to the escrow agent ("escrow shares").

21. On December 29, 1986, Defendant U.F. Genetics also received the right to possess the escrow shares at the expiration of the HSR Act premerger notification waiting period; and received the right to possess any earnings on the escrow shares at the expiration of the HSR Act premerger notification waiting period, pursuant to the Stock Purchase Agreement and Ancillary Agreements.

22. On December 29, 1986, Defendant U.F. Genetics paid Defendant ARCO 49 percent of the \$18 million (\$8.82 million) in cash and notes and placed the remaining 51 percent of the \$18 million (\$9.18 million) in cash and notes into an escrow account as payment for the escrow shares ("escrow funds") -- interest on both sets of notes began accruing on December 29, 1986.

23. On December 29, 1986, Defendant ARCO received a right to direct the investment of the cash portion of the escrow funds, and received the right to take possession of the escrow funds and all earnings accumulated during escrow at the expiration of the HSR Act premerger notification waiting period, pursuant to the Stock Purchase Agreement and Escrow and Pledge Agreement.

24. As a result of the acquisition described above, Defendant U.F. Genetics acquired, and Defendant ARCO transferred,

on December 29, 1986, beneficial ownership of 100 percent of the voting securities of ARCO Seed.

25. Defendants ARCO and U.F. Genetics were each obligated to file premerger notification and report forms with the Federal Trade Commission and the Department of Justice and observe the required waiting period before U.F. Genetics acquired beneficial ownership of 100 percent of the voting securities of ARCO Seed from ARCO.

26. Instead of filing and waiting prior to the December 29, 1986, transaction, Defendants U.F. Genetics and ARCO filed premerger notification and report forms on December 30, 1986, for the acquisition of ARCO Seed. The waiting period mandated by the Act began on December 30, 1986, and expired on January 29, 1987, thirty days after the filing, and thirty-one days after the violation began.

27. Accordingly, Defendants ARCO and U.F. Genetics did not comply with the notification and waiting requirements of the HSR Act and Rules when, on December 29, 1986, Defendants U.F. Genetics and ARCO entered into a transaction in which U.F. Genetics acquired beneficial ownership of 100 percent of the voting securities, from ARCO.

28. Defendants ARCO and U.F. Genetics were continuously in violation of the HSR Act from December 29, 1986, through January 29, 1987.

PRAYER

WHEREFORE, Plaintiff prays:

1. That the Court adjudge and decree that Defendants ARCO and U.F. Genetics violated on December 29, 1986, Section 7A of the Act, 15 U.S.C. § 18a, with respect to their failure to file notifications and observe the waiting period prior to the acquisition of voting securities of ARCO Seed by U.F. Genetics from ARCO; and further that Defendants ARCO and U.F. Genetics were in violation of the Act on each day of the period from December 29, 1986, through January 29, 1987;

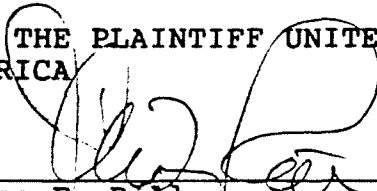
2. That Defendants ARCO and U.F. Genetics be ordered to pay to the United States an appropriate civil penalty as provided by subsection (g)(1) of Section 7A of the Act, 15 U.S.C. § 18a(g)(1), for their violations of Section 7A of the Act, with respect to their failure to file notifications and observe the waiting period prior to U.F. Genetics' acquisition of voting securities of ARCO Seed from ARCO;

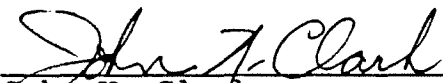
3. That Plaintiff have such other and further relief as the Court may deem just and proper; and

4. That Plaintiff be awarded its costs of this suit.

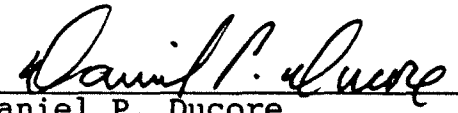
Dated: December 20, 1991

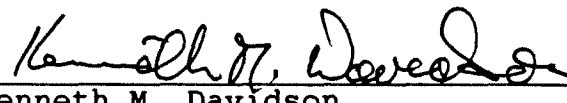
FOR THE PLAINTIFF UNITED STATES OF AMERICA

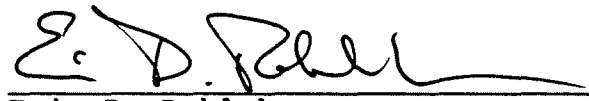

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