

**GOVERNMENT OF THE
NORTHERN MARIANA
ISLANDS**

vs.

MOBIL OIL MICRONESIA, INC.

**Civil Action No. 78-003
District Court NMI**

Decided February 12, 1979

1. Federal Law - Antitrust

Federal antitrust laws apply in the Commonwealth. Covenant, §502.

2. Federal Law - Antitrust

Where government supply contracts with private entities are the result of valid governmental action, they are exempt from scrutiny under federal antitrust laws.

**3. Estoppel - Contracts -
Successor in Interest**

A successor in interest to a contract is estopped to attack the judgment against its predecessor in interest where the subject matter of the prior action is the same as the subject matter of the instant action.

**4. Contracts - Illegal - In Pari
Delicto**

Plaintiff Commonwealth in the instant case is the successor to the Trust Territory Government, which was an active participant in the formation and implementation of the contract, and was equally at fault with the defendant under antitrust laws and, therefore, the Commonwealth is subject to the same pari delicto defense as its predecessor in interest.

FILED
Clerk
District Court

FEB 12 1979

For The Northern Mariana Islands

By _____
(Deputy Clerk)

UNITED STATES DISTRICT COURT
DISTRICT OF THE NORTHERN MARIANA ISLANDS

GOVERNMENT OF THE NORTHERN MARIANA)
ISLANDS.)

Plaintiff,)

vs.)

MOBIL OIL MICRONESIA, INC.,)
Defendant.)

Civil No. 78-003

MEMORANDUM OF
GROUNDS FOR DECISION

In this action defendant moved for summary judgment. The matter came on for hearing and the Court heard the arguments of counsel. The Court permitted the plaintiff to file a supplemental memorandum and upon such filing the motion was submitted for decision. The Court has heretofore caused to be filed its decision. This Memorandum states the grounds for such decision.

Plaintiff is the Government of the Northern Mariana Islands, a sovereign political subdivision of the United States of America, successor-in-interest to the Trust Territory of the Pacific Islands (Trust Territory). Defendant is Mobil Oil Micronesia, Inc. ("Mobil"), a corporation, incorporated under the laws of the Trust Territory on or about June 30, 1966. Plaintiff by its complaint alleges that defendant has been and is violating the antitrust laws of the United States. Upon the implementation of the Covenant between the United States of America and the Government of the Northern Mariana Islands on January 9, 1978, the antitrust laws of the United States became applicable to the Northern Mariana Islands. This Court has jurisdiction of this action pursuant to the antitrust laws of the United States.

1 The Trust Territory conducted economic studies and
2 analyses from which it concluded that it was in the best
3 interests of the Trust Territory and its inhabitants to
4 invite proposals from private firms and corporations to
5 furnish and supply the Trust Territory government with its
6 requirements of petroleum products, including the ancillary
7 equipment and storage facilities. These studies and analyses
8 are reflected in Senate Joint Resolution No. 19, copy of which
9 is attached to defendant's motion for summary judgment as
10 Exhibit No. 3.

11 On or about February 25, 1966, Harold E. Arnold,
12 Acting Director, Property and Supply for the Trust Territory,
13 wrote letters to defendant and others forwarding copies of a
14 request for proposals for instituting a territory-wide system
15 of procuring, marketing and distributing petroleum products
16 within the Trust Territory of the Pacific Islands from
17 qualified sources. (See Exhibit A, letter attached to
18 affidavit of Robert W. Barney filed in this action on
19 April 17, 1978.) On or after February 23, 1966, the Trust
20 Territory published an advertisement in the "Pacific Daily
21 News" which advertisement stated as follows:
22

23 Request for Proposals

24 Proposals for instituting a territory-wide
25 system of procuring, marketing and dis-
26 tributing petroleum products within the
27 Trust Territory of the Pacific Islands
28 from qualified sources will be received
29 in the office of the Acting Director,
30 Property and Supply, Saipan, Mariana
31 Islands, until 4:30 P.M., April 10, 1966.

32 Request for proposals, setting forth
information regarding proposals may be
obtained at the Office of the Trust Territory
Liaison Officer, Butler Building, Agana,
Guam, or at the office of the Acting
Director, Property and Supply, Saipan,
Mariana Islands.

(Sgd) F. H. Moulton,
Contracting Officer
Trust Territory of the
Pacific Islands

1 A copy of the Trust Territory's Request for Proposals dated
2 March 1, 1966, is attached to the affidavit of Robert W. Barney,
3 filed herein on April 17, 1978, as Exhibit "C".

4 As reflected in the letter of L. K. Anderson,
5 Contracting Officer for the High Commissioner, Trust Territory,
6 to Mobil Oil Philippines, Inc., dated May 11, 1966, proposals
7 were received by the Trust Territory from the following six
8 organizations:

9 Shell Refining Company (Philippines), Inc.
10 Yap Cooperative Association
11 Nanyo Boeki Kaisha, Ltd.
12 Caltex (Philippines), Inc.
13 Mobil Oil Philippines, Inc.
14 Esso Standard Eastern, Inc.

15 A copy of the Anderson letter is attached to the Barney
16 affidavit as Exhibit "B".

17 As reflected in a letter dated May 23, 1966, from
18 L. K. Anderson, Contracting Officer for the High Commissioner
19 of the Trust Territory of the Pacific Islands, to Mr. E. P.
20 Edmunds, on or about May 23, 1966, the Trust Territory
21 determined that it would be in its best interests to hold
22 further discussions with Esso Standard, Inc. ("Esso") and
23 Mobil Investments S.A., with a view toward developing further
24 information which could lead to the government's entering into
25 definitive contract negotiations with Esso or Mobil Investments
26 S.A. A copy of said letter is attached as Exhibit "E" to the
27 Barney affidavit.

28 On May 25, 1966, M. W. Goding, High Commissioner,
29 advised Mr. E. P. Edmunds, Vice President, Mobil Investments,
30 S.A., that the Trust Territory had determined, after
31 consideration of all proposals that discussions should be
32 commenced as soon as possible with representatives of Mobil
Investments S.A., or its designee, with a view toward
developing and finalizing details leading to the execution of

1 necessary agreements between the Trust Territory and Mobil.
2 See Exhibit "F" to the Barney affidavit.

3 On or about June 30, 1966, a Supply Agreement
4 ("Agreement") was executed between the Trust Territory and
5 Mobil, which provided, in substance and effect, that the Trust
6 Territory was to purchase and Mobil to sell all of the Trust
7 Territory needs for petroleum products at predetermined
8 formula prices according to the terms and conditions set forth
9 in paragraph 6 of the Agreement. The execution of this
10 Agreement represented the duly authorized and binding act of
11 the Trust Territory and Mobil enforceable against each of
12 them in accordance with its terms. A copy of the Agreement is
13 attached to the complaint filed herein as Exhibit "ONE".

14 The initial term of the Agreement was for a ten (10)
15 year period commencing on June 30, 1966, and ending on or about
16 June 30, 1976. The Agreement also contained an optional five
17 (5) year renewal period.

18 On June 7, 1973, the Honorable Peter T. Coleman,
19 Deputy High Commissioner of the Trust Territory, advised Mobil
20 that, in accordance with paragraph 11 of the Agreement, that
21 the Department of the Interior had requested that all interested
22 parties be given an opportunity to submit proposals for the
23 supply, storage and distribution of petroleum products in the
24 Trust Territory for the period beginning on July 1, 1976. A
25 copy of this letter dated June 7, 1973, is attached to the
26 affidavit of Barney and marked Exhibit "G". This letter
27 indicates that a public announcement of solicitation of
28 proposals was published in the Pacific Daily News on or about
29 June 15, 1973.

30 The solicitation for proposals referred to in
31 paragraph 12 was published in the Pacific Daily News and other
32

1 newspapers in the Pacific area on or about June 15, 1973.

2 By letter dated July 17, 1973, Richard L. Miyamoto,
3 Esquire, Attorney General for the Trust Territory, transmitted
4 to Mobil and other interested parties a package with all the
5 pertinent information regarding the Trust Territory Request
6 for Proposals.

7 A copy of the objectives of the government in
8 soliciting proposals from petroleum products companies is set
9 forth as Exhibit "H" to the Barney affidavit.

10 On or about February 7, 1973, the Fifth Congress of
11 Micronesia, First Regular Session, adopted "House Joint
12 Resolution No. 2," a copy of which is attached to defendant's
13 motion for summary judgment filed herein on April 17, 1978,
14 as Exhibit "FOUR". This resolution provides in pertinent part
15 as follows:

16 "WHEREAS, by a competitive bidding process the
17 Trust Territory Government awarded to Mobil Oil
18 Micronesia in 1966 the contract to provide the
19 government's petroleum requirements and to purchase
20 the existing petroleum dispensing facilities from
21 the government; and

22 WHEREAS, since 1966 said Mobil Micronesia, Inc.,
23 has made every possible effort to provide efficiently
24 the necessary petroleum products in every district
25 of Micronesia to meet the rising demands for such
26 products by the government as well as the private
27 sectors of the Micronesian economy; and

28 WHEREAS, this Congress through its committees
29 has on several occasions undertaken an in-depth
30 study and review of the activities of Mobil Oil
31 Micronesia, Inc., the latest one having been done
32 by the House Committee on Resources and Development
33 in December, 1972, and as a result of these reviews
34 and its evaluations it has discovered past investment
35 programs, present activities and projects in all
36 districts of the Trust Territory as well as its
37 future plans to be most acceptable and in keeping
38 with the government's policy to promote and advance
39 the well-being and betterment of the Micronesian
40 people; and

41 WHEREAS, between 1966 and 1972, Mobil Oil
42 Micronesia, Inc., has invested in the Trust Territory
43 the sum of over \$2 million, successfully and effectively

1 carried out the training of Micronesians to assume
2 positions of responsibility and management of the
3 company; embarked upon a program of improving the
4 facilities of gasoline retailers throughout Micronesia
5 to serve the motoring public by way of business and
6 technical advice, mode of equipment, monetary loans;
7 insured the regularity and dependability and in the
8 availability of petroleum products; embarked on an
9 ambitious program of providing scholarship support
10 to students attending Micronesian schools; and
11 allowed Micronesians to invest and own well over
12 \$100,000 in preferred stock in the company, the said
13 stock paying a ten percent dividend as of December
14 31 of every year; and

15 WHEREAS, it is the sense of this Congress that
16 it would be in the best interests of the Trust
17 Territory government and of the Micronesian people
18 if the present contract between the government and
19 Mobil Oil Micronesia, Inc., were to be renewed and
20 extended beyond its present expiration date; NOW
21 THEREFORE

22 BE IT RESOLVED, by the House of Representatives
23 of the Fifth Congress of Micronesia, First Regular
24 Session, 1973, the Senate concurring, that by means
25 of this House Joint Resolution this Congress convey
26 its commendation to Mobil Oil Micronesia, Inc., for
27 the exemplary manner in which this company has conducted
28 and carried out its commercial business in Micronesia
29 and apprise the High Commissioner of the sense of
30 this Congress that he should renew and extend the
31 present contract between the government and Mobil
32 Oil Micronesia, Inc., by not giving the government
33 notice of intent to terminate said contract prior to
34 the expiration date thereof; . . . "

35 After receiving no proposals from other parties, by
36 letter dated December 7, 1973, the Honorable Edward E. Johnston
37 High Commissioner of the Trust Territory, notified Mobil that
38 "the government has decided that its best interest will be
39 served by allowing the renewal of the contract for an
40 additional five-year period from June 30, 1976. This is your
41 notice of that decision." A copy of said letter is attached
42 to the Barney affidavit as Exhibit "I".

43 Since 1966, Mobil's entire investment in the Trust
44 Territory in the fulfillment of its duties under the supply
45 contract, including the purchase of facilities from the Trust
46 Territory in 1966, has been in excess of \$3,620,000. (Barney
47 Affidavit, Item 4, P. 2.)

1 A controversy arose between Mobil and the District
2 of the Northern Marianas of the Trust Territory in 1975
3 concerning whether residual fuel oil, otherwise known as
4 Fuel Oil Number Six, required by the Trust Territory for the
5 power barge, "Impedance", at Saipan Island, was subject to the
6 June, 1966, Supply Agreement between Mobil and the Trust
7 Territory.

8 This controversy was the subject of declaratory
9 judgment proceedings which were resolved by a judgment in
10 favor of Mobil in Mobil Oil Micronesia, Inc. v. The Trust
11 Territory of the Pacific Islands, Civil Action No. 133-75,
12 Trial Division of the High Court, Trust Territory of the
13 Pacific Islands, on September 29, 1975. A copy of said
14 judgment is attached to defendant's motion for summary
15 judgment filed herein on April 17, 1978. That judgment holds,
16 in pertinent part, as follows:

17 "1. The agreement of June 30, 1966, between
18 the plaintiff and the defendant, as renewed,
19 is a valid requirements contract, providing
20 for the procurement of petroleum products for
use in the Trust Territory."

21 Pursuant to the act of March 24, 1976, Public Law
22 94-241, 90 Stat. 263, the Covenant to Establish a Commonwealth
23 of the Northern Mariana Islands in Political Union with the
24 United States of America, was approved by Congress. Said
25 Covenant is set forth at 48 U.S.C. § 1681.

26 On March 24, 1976, the Acting Secretary of the
27 Interior issued Order No. 2989 which provided in Section 5
28 as follows:

29 "All contracts, franchises, claims, demands,
30 titles, rights, permits, licenses, and other
31 forms of rights, privileges and obligations
32 entered into or obtained prior to the Order
shall remain in full force and effect until
their natural or legal termination. The
effect of Order No. 2989 is that all contracts,

1 etc., which were formerly applicable to the
2 Northern Mariana Islands by virtue of its
3 being a part of the Trust Territory of the
4 Pacific Islands will remain in full force
5 and effect with respect to the newly created
6 government until their natural or legal
7 termination."

8 The effect of the Secretarial Order is to make the
9 contract between Mobil and the Trust Territory binding upon
10 the Government of the Northern Marianas until the contract's
11 "natural or legal termination".

12 The Order No. 2989 of the Acting Secretary of Interior,
13 issued on March 24, 1976, further provides in Section XIV as
14 follows:

15 "This order shall be effective as of
16 April 1, 1976. Its provisions shall remain
17 in effect until the issuance of the proclamation
18 by the President of the United States as
19 described in Section 1003(b) of Article X
20 of the Covenant, or until it is amended,
21 superceded, or revoked, whichever occurs first."

22 On October 24, 1977, the President of the United States
23 issued Proclamation No. 4534, 42 Fed. Reg. 56593 as described
24 in Section 1003(b) of Article X of the Covenant. Section 1 of
25 the proclamation indicates, in substance and effect, that the
26 Constitution of the Northern Mariana Islands shall come into
27 full force and effect at 11:00 o'clock on the morning of
28 January 9, 1978. Section 2 of said proclamation indicates,
29 inter alia, that Section 502 of the Covenant shall come into
30 full force and effect on the same date, i.e., January 9, 1978.
31 Section 502 of the Covenant provides as follows:

32 "Section 502.(a) The following laws of the
United States in existence on the effective
date of this section and subsequent amendments
to such laws will apply to the Northern Mariana
Islands, except as otherwise provided in this
Covenant.

* * * *

"(2) Those laws not described in paragraph (1)
which are applicable to Guam and which are of

1 general application to the several states as
2 they are applicable to the several states;
3 and"

4 [1] The effect of Section 502 of the Covenant is to make
5 applicability in the Northern Mariana Islands on and after
6 January 9, 1978, the antitrust laws of the United States.

7 It appears from Order No. 2989, supra, that all
8 obligations and contracts of plaintiff's predecessor, Trust
9 Territory for the Pacific Islands, remain in full force and
10 effect after January 9, 1978, with the same force and effect
11 as that existed prior thereto.

12 [2] It is the opinion of this Court that the 1966 Supply
13 Agreement between the Trust Territory of the Pacific Islands
14 and defendant, and the renewal of such Agreement, were the
15 result of valid governmental action and as such are exempt from
16 scrutiny under the Federal antitrust laws under principles
17 enunciated in Parker v. Brown, 317 U.S. 341 (1943). The Trust
18 Territory of the Pacific Islands initiated the negotiations
19 which led to the execution of such 1966 Agreement and the
20 renewal of that Agreement was initiated as it heretofore
21 appears by the Trust Territory of the Pacific Islands. Title
22 2, Trust Territory Code, Section 1, in pertinent part gives
23 to the High Commissioner, acting for the Government of the
24 Trust Territory, primary responsibility, inter alia, for
25 establishment and control of the terms and conditions under
26 which importing licenses shall be issued while
27 Section 51 of the same Title gives to the High Commissioner,
28 subject to the supervision and direction of the Secretary of
29 the Interior, all executive and administrative powers of
30 government in the Trust Territory.

31 It should be noted factually that the contract made
32 by defendant with the Trust Territory government is not an

1 exclusive franchise but only a Government supply agreement.

2 [3] It has already been established that the contract in
3 question is valid as a matter of law. The decision was
4 reached in Civil Action No. 133-75 before the High Court of
5 the Trust Territory. That Court found as a fact that the
6 Agreement of 1966, with which we are here concerned, is a valid
7 requirements contract providing for the procurement by the
8 Trust Territory of petroleum products for use within the
9 Trust Territory and the Court so ruled. It would appear that
10 plaintiff in the instant action is estopped to contend that
11 the contract in question is not a valid requirements contract.
12 A successor in interest is so estopped to attack the judgment
13 against its predecessor in interest where the subject matter
14 of the prior action between, as here, the defendant and the
15 Trust Territory is the same as the subject matter of the
16 instant action between plaintiff and defendant.

17 It is clear from the record that the 1966 Supply
18 Agreement was executed because of the initiation by the Trust
19 Territory of the concept of having one supplier for all
20 petroleum products to be purchased by the Trust Territory
21 Government throughout the Trust Territory. It sought bids
22 from various oil companies for the supplying of all of the
23 petroleum products to the Trust Territory Government. Then
24 again when the Agreement was extended, it was the Trust
25 Territory Government that notified defendant that the Trust
26 Territory desired to have the renewal of the contract go
27 forward.
28

29 [4] It would thus seem that the doctrine of pari delicto,
30 as enunciated by Mr. Justice Marshall in his concurring opinion
31 in Perma Life Mufflers, Inc. vs. International Parts, Inc.,
32 392 U.S. 134 (1968), at pages 148-149, is applicable to this

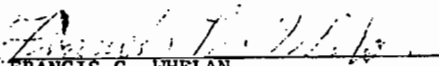
1 case and that plaintiff should be barred recovery on such
2 basis also. The Trust Territory Government is shown upon the
3 record to be the most active participant in the formation and
4 implementation of the contract here in question and is
5 substantially equally at fault (if there be any fault on the
6 part of any body) with the defendant. This Court does not
7 consider that in this case there is any legal fault under the
8 antitrust laws but considers that the pari delicto defense
9 is available to the defendant for the reason that the plaintiff
10 in the instant case is the successor in interest of the Trust
11 Territory Government and is subject to the same infirmities in
12 the area of pari delicto as its predecessor in interest.

13 This Court does not consider that Javelin v. Uniroyal,
14 Inc., (C.A. 9th 1977) 546 F.2d 276, mandates a contrary result

15 The plaintiff in this case has moved for a partial
16 summary judgment. Such partial summary judgment is denied for
17 the reasons set forth for the granting of defendant's motion
18 for summary judgment.

19 The foregoing constitutes a summary of the material
20 undisputed facts and the Conclusions of Law of the Court.
21 Where there is no material disputed fact, as here, this is a
22 proper case for summary judgment. The Court will cause to be
23 filed and entered its formal written judgment but no judgment
24 shall be entered until such formal judgment of the Court is
25 entered.
26

27 DATED: February 1, 1979.

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31 
FRANCIS C. WHELAN
United States District Judge
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