

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Civil Action No. 72-285
) Filed: April 12, 1972
 H. K. PORTER COMPANY, INC.,)
)
 Defendant.)

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendant, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted against the defendant under Section 4 of the Act of Congress of July 2, 1890 (15 U.S.C. § 4), as amended, commonly known as the Sherman Act, in order to prevent and restrain the continuing violations by the defendant as hereinafter alleged, of Sections 1 and 2 of said Act (15 U.S.C. §§ 1 and 2).

2. The defendant H. K. Porter Company, Inc., maintains an office, transacts business, and is found within the Western District of Pennsylvania.

II

THE DEFENDANT

3. H. K. Porter Company, Inc. (hereinafter referred to as "Porter") is made a defendant herein. Porter is a

corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Pittsburgh, Pennsylvania. As used herein, the term "Porter" shall include all subsidiaries of the defendant H. K. Porter Company, Inc.

III

TRADE AND COMMERCE

4. Porter is a diversified industrial corporation which, through its six operating divisions, is engaged in the production and sale of a wide variety of steel and metal products, refractory materials, machine tools, electrical equipment, and automotive products. Through its two subsidiary corporations, Banks-Miller Supply Company and Pacific Asbestos Corporation, Porter is also engaged in the distribution of industrial equipment and the mining and milling of asbestos. In 1970, Porter ranked as the 358th largest industrial corporation in the United States with total sales of approximately \$279 million, and operated production and distribution facilities in approximately 20 states and seven foreign countries.

5. Porter purchases substantial quantities of raw materials, equipment, supplies, commodities and services from other companies for use in its own operations. Many of Porter's suppliers are also substantial purchasers of the types of products produced and sold by Porter.

6. Porter's purchases of raw materials, equipment, supplies, commodities and services from its suppliers are made in a continuous flow of interstate commerce. Conversely, shipments by Porter of its products to these suppliers and

its other customers are made in a continuous flow of interstate commerce.

IV

OFFENSES ALLEGED

7. Since at least as early as 1956, and continuing to the date of this complaint, the defendant has violated Section 1 of the Sherman Act (15 U.S.C. § 1) by entering into combinations involving reciprocal purchasing arrangements with respect to a substantial amount of interstate commerce whereby the defendant purchased products and services from various suppliers upon the understanding that those suppliers would purchase the products and services of the defendant, in unreasonable restraint of the aforesaid trade and commerce.

8. Since at least as early as 1956, and continuing to the date of this complaint, the defendant, through the use of its purchasing power, has violated Section 2 of the Sherman Act (15 U.S.C. § 2) by attempting to monopolize that part of the aforementioned interstate trade and commerce consisting of the requirements of actual and potential suppliers of the defendant for products of the kinds sold by the defendant.

9. Pursuant to the aforesaid combinations and attempt to monopolize, the defendant has done, among other things, the following:

- (a) Adopted a policy of reciprocal purchasing or of purchasing from suppliers who would purchase from the defendant;

- (b) Designated a trade relations manager with the specific responsibility of coordinating trade relations within the corporation to facilitate and promote the practice of reciprocal dealings;
- (c) Maintained comparative purchase and sales records to measure the balance of purchases from, and sales to, suppliers;
- (d) Took measures to insure that actual and potential suppliers were aware of defendant's practice of reciprocal purchasing;
- (e) Discussed with actual and potential suppliers their sales and purchase positions relative to the defendant;
- (f) Caused suppliers to purchase, or to maintain or to increase their purchases, from the defendant in reciprocation for the defendant's purchases from those suppliers;
- (g) Purchased goods and services from particular suppliers upon the understanding that these suppliers would purchase the goods and services of the defendant; and
- (h) Belonged to and took an active part in the Trade Relations Association, Inc., for the purpose of promoting the defendant's trade relations program.

V

EFFECTS

10. The aforesaid violations by the defendant have had the following effects, among others:

- (a) Competitors of the defendant in the sale of various goods and services have been foreclosed from selling substantial quantities thereof to firms that are actual and potential suppliers of the defendant; and
- (b) Suppliers of various goods and services required by the defendant have been foreclosed from selling substantial quantities of such goods and services to the defendant.

PRAYER

WHEREFORE, plaintiff prays:

1. That the aforesaid combinations between the defendant and its suppliers involving reciprocal purchasing arrangements be adjudged and decreed to be in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).
2. That the aforesaid attempt to monopolize be adjudged and decreed to be in violation of Section 2 of the Sherman Act (15 U.S.C. § 2).
3. That the defendant and its officers, directors, agents, and all other persons acting on behalf of the defendant, be perpetually enjoined from:
 - (a) Entering into or adhering to any contract, agreement or understanding with any supplier involving reciprocal purchasing arrangements;
 - (b) Communicating to suppliers that it will place its purchases with or give preference to suppliers who purchase from the defendant;
 - (c) Engaging in the practice of compiling statistics which compare the defendant's purchases of goods

or services from companies with sales by the defendant to such companies;

- (d) Discussing with suppliers comparative purchase and sales data of such companies relative to the defendant;
- (e) Compiling lists of approved suppliers based entirely or in part on suppliers' purchases from the defendant;
- (f) Transmitting to personnel with sales responsibilities information concerning purchases by the defendant from particular suppliers, transmitting to personnel with purchasing responsibilities information concerning sales by the defendant to particular companies, or otherwise implementing any program involving reciprocity;
- (g) Utilizing purchases by the defendant or one of its subsidiaries, affiliated companies or divisions from particular suppliers to promote sales to such suppliers by the defendant or one of its subsidiaries, affiliate companies or divisions.

4. That this Court order the defendant to abolish any duties that are assigned to any of its officials or employees which relate to the conduct or effectuation of a reciprocity or trade relations program.

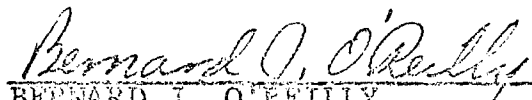
5. That this Court order the defendant to advise all of its suppliers, by written notice, that the defendant no longer engages in reciprocal purchasing and to furnish a copy of the Final Order of this Court to such suppliers.

6. That plaintiff have such other relief as the nature of the case may require and the Court may deem just and proper.


7. That plaintiff recover the costs of this action.



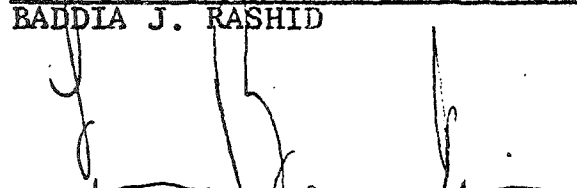
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