

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

Plaintiff :

v. :

KENNECOTT COPPER CORPORATION, :

Defendant :

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Civil Action No. 71-Civ-119

Filed: January 11, 1971

COMPLAINT

The United States of America, plaintiff, by its attorneys, 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 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 Kennecott Copper Corporation maintains an office, transacts business, and is found within the Southern District of New York.

II

THE DEFENDANT

3. Kennecott Copper Corporation is made a defendant herein. Kennecott is a corporation organized and existing under the laws of the State of New York, with its

principal executive offices in New York City. For the purpose of this complaint, "Kennecott" means Kennecott Copper Corporation and its divisions and subsidiaries.

### III

#### TRADE AND COMMERCE

4. Kennecott is the largest domestic producer of copper. It extracts ore from its mines, processes the ore by concentration, smelting, and refining, and sells or fabricates the refined copper. Its domestic facilities, including mines, concentrating mills, smelters, and refineries, are located in various states. Copper produced by Kennecott is sold and shipped to customers located throughout the United States.

5. Kennecott fabricates copper and brass mill products, including sheet, tube, rod, wire, extruded shapes, and wire and cable for power transmission. Fabricating plants are operated in several states, including Connecticut, Ohio, and Pennsylvania. Products produced at these plants are sold and shipped to customers located in states other than those in which they are produced. Kennecott, through its subsidiary, Peabody Coal Company, also mines and sells coal. Sales are made from mines in Illinois to customers located in various states.

6. In 1969, Kennecott had sales of over \$1 billion, assets of over \$1.6 billion, and capital and surplus of over \$1.1 billion.

7. Kennecott purchases substantial quantities of numerous commodities, raw materials, equipment, supplies,

and services from numerous other companies. Kennecott makes substantial purchases from corporations which are purchasers of the type of products produced by Kennecott.

8. Substantial portions of the commodities, raw materials, equipment, and supplies purchased by Kennecott are shipped from their place of origin across state lines to their point of use by Kennecott.

#### IV

##### OFFENSES CHARGED

9. Since at least as early as 1956, and continuing to the date of this complaint, Kennecott has violated Section 1 of the Sherman Act by entering into combinations involving reciprocal purchasing arrangements with respect to a substantial amount of interstate commerce whereby Kennecott purchased goods and services from suppliers upon the understanding that said suppliers would purchase goods from Kennecott, in unreasonable restraint of the aforesaid trade and commerce.

10. Since at least as early as 1956, and continuing to the date of this complaint, Kennecott, through the use of its purchasing power, has violated Section 2 of the Sherman Act by attempting to monopolize that part of the above described interstate trade and commerce consisting of the requirements of actual and potential supplier-customers of Kennecott for copper, copper products, and other products of Kennecott.

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

- (a) Compiled and coordinated comparative purchase and sales data and other information relating to its customers and suppliers;
- (b) Utilized this information to determine which suppliers should be favored and the extent to which they should be permitted to participate in supplying Kennecott's requirements of goods and services;
- (c) Discussed with actual and potential suppliers and customers their sales and purchase positions relative to Kennecott;
- (d) Purchased goods and services from certain suppliers on the understanding that such suppliers would purchase goods from Kennecott;
- (e) Refused to buy or reduced purchases from certain suppliers who did not purchase, maintain purchases, or increase purchases from Kennecott;
- (f) Used purchases from particular suppliers by one Kennecott subsidiary or division to promote sales to such suppliers by another Kennecott subsidiary or division;
- (g) Caused or induced particular suppliers from whom it purchases to buy from certain companies which purchase from the defendant; and
- (h) Caused or induced particular suppliers from whom it purchases to persuade other companies to buy from the defendant.

V

EFFECTS

12. The aforesaid violations by Kennecott have had the following effects, among others:

- (a) Competitors of Kennecott in the sale of various goods have been foreclosed from selling substantial quantities thereof to firms that are supplier-customers of Kennecott; and
- (b) Actual and potential suppliers of various goods and services purchased by Kennecott have been foreclosed from selling substantial quantities of such goods and services to Kennecott.

PRAYER

WHEREFORE, the 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.

2. That the aforesaid attempt to monopolize be adjudged and decreed to be in violation of Section 2 of the Sherman Act.

3. That the defendant Kennecott and its officers, directors, agents, and all other persons acting on behalf of said defendant, be perpetually enjoined from:

- (a) Entering into or adhering to any contract, agreement, or understanding with any actual or potential customer or supplier

- involving reciprocal purchasing arrangements;
- (b) Communicating to actual or potential customers or suppliers that it will place its purchases with or give preference to suppliers who purchase from the defendant;
  - (c) Communicating to actual or potential customers or suppliers statistics comparing purchases of goods and services by the defendant from such companies with sales by the defendant to such companies;
  - (d) Continuing the practice of compiling statistics which compare Kennecott's purchases of goods or services from companies with sales by the defendant to such companies;
  - (e) 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;
  - (f) Utilizing purchases by one Kennecott subsidiary or division from particular suppliers to promote sales to such suppliers by another Kennecott subsidiary or division;
  - (g) Causing or inducing particular suppliers from whom it purchases to purchase from certain companies which purchase from the defendant;
- and

(h) Causing or inducing particular suppliers from whom it purchases to persuade other companies to buy from the defendant.

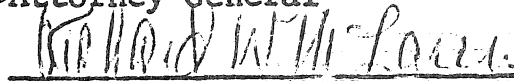
4. That this Court order the defendant to abolish any duties that are assigned to any of its officials or employees which relate to the conduct or effectuation of its reciprocity or trade relations program.

5. That this Court order the defendant to advise all of its suppliers, by written notice, that the defendant's reciprocity or trade relations program has been terminated 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 the Plaintiff recover the costs of this action.

  
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