

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANTHRACITE EXPORT ASSOCIATION, et al.,

Defendants.

CIVIL ACTION
NO. 9171

Entered: Nov. 12, 1970

FINAL JUDGMENT

This cause was submitted to this Court on Cross Motions for Judgment on Case Submitted, the record before the Court consisting of an Amended Complaint, Joint Answer to Amended Complaint and a Stipulation of Facts and annexed exhibits.

The parties by their respective attorneys and before the taking of testimony have consented to the entry of this Final Judgment without this Final Judgment constituting any admission by any defendant with respect to any issues in this case except the nonapplicability of the Webb-Pomerene Act exemption to the acts of defendants;

NOW THEREFORE, It is By the Court Ordered, Adjudged and Decreed that:

1. This Court has jurisdiction of the subject matter of this action and of the parties hereto pursuant to Section 15 of the Act of Congress of October 15, 1914, as amended, 15 U.S.C. 25.

2. In United States v. Concentrated Phosphate Export Association, 399 U.S. 199, the Supreme Court of the United States held that the Webb-Pomerene Act did not immunize from the Sherman Act concerted action by a Webb-Pomerene association in making sales to a foreign government under a United States foreign aid program. The acts of defendants alleged in the Amended Complaint are not immunized from the application of the Sherman Act (15 U.S.C. § 1) by reason of the act of April 10, 1918, 15 U.S.C. §§ 61-65 (commonly known as the Webb-Pomerene Act). Accordingly:

A. As and to the extent stipulated, it is adjudged and decreed that defendants have combined and conspired to restrain and have restrained commerce in anthracite supplied under the Army program, as defined in paragraphs 5 and 6 of the Stipulation of Facts referred to above, in violation of Section 1 of the Sherman Act.

B. Each defendant and each member of defendant Anthracite Export Association ("AEA") is hereby enjoined and restrained from entering into or agreeing to or carrying out any plan, program or arrangement with the AEA or any member of the AEA:

(1) To control, fix or maintain prices of anthracite to be offered or supplied under the Army program;

(2) To allocate the whole or any part of anthracite to be offered or supplied under the Army program, whether directly or indirectly by subcontract arrangement;

(3) To refrain from competing, in whole or in part, in the production, bidding, sale, or distribution of anthracite under the Army program;

(4) To offer or sell anthracite through any common selling agent, or to any common purchaser for resale under the Army program; subject to the foregoing an AEA member may unilaterally offer or sell anthracite through any agent or to any purchaser which is also acting in that capacity in respect of the anthracite offered or sold by one or more other AEA members, and/or solicits the business of more than one AEA member at the same prices.

C. Each defendant and each AEA member is hereby enjoined from entering into any contract, agreement or understanding with an exporter or importer to quote or sell anthracite to or through such exporter or importer exclusively under the Army program unless such member enters into such an exclusive dealing contract, agreement or understanding with a single exporter or importer which in turn is not a party to such a contract, agreement or understanding with any other member; provided, however, that this paragraph C shall not prohibit, without more, unilateral refusals by any defendant or AEA member to quote or sell anthracite to or through any exporters or importers.

D. Defendants Foreston Coal Company and Foreston Coal Export Corp. are hereby enjoined from entering into any contract, agreement or understanding:

(1) With more than one defendant or AEA member which gives either Foreston defendant the exclusive right to quote or sell anthracite of such defendant or AEA member under the Army program; provided, however, that this paragraph D(1) shall not prohibit, without more, either Foreston defendant from obtaining, from more than one AEA member, the right to quote or sell the anthracite of such other member or members if such member or members unilaterally refuse to quote or sell anthracite to or through any other exporter or exporters.

(2) With any two or more defendants or AEA members, who have agreed to offer or sell anthracite through either Foreston defendant as a common sales agent, or to either Foreston defendant as a common purchaser for resale under the Army program; subject to the foregoing either Foreston defendant, whether acting as an agent or purchaser, may unilaterally solicit or obtain offers of anthracite, at the same prices or otherwise, from more than one defendant or AEA member.

E. With respect to the three fiscal years beginning with Fiscal Year 1972, Lehigh Valley Anthracite, Inc.⁴ and Glen Alden Corporation, their successors and assigns, are hereby enjoined from offering or selling anthracite to or through any common domestic selling agent or to any common domestic purchaser for resale with respect to any particular procurement under the Army program; provided that any defendant or AEA member shall be free to subcontract with, purchase from, or sell to, any anthracite producer (excluding transactions between Glen Alden Corporation and Lehigh Valley Anthracite, Inc., their successors and assigns); and provided further that the anthracite bid or offered by Glen Alden Corporation and Lehigh Valley Anthracite, Inc., their successors and assigns, shall be offered on the same terms and conditions to at least two importers.

F. Defendant AEA is hereby directed to amend its articles of association and by-laws within ninety (90) days from and after the entry of this Final Judgment to require, as a condition of membership, that each member consent to be bound by this Final Judgment as a defendant herein.

G. The provisions of this Final Judgment applicable to any defendant shall apply to each such defendant, to its successors and assigns, to each of their respective officers, directors, agents, servants and employees, and to all persons in active concert or participation with any such defendant who shall have received actual notice of said Final Judgment by personal service or otherwise.

H. For the purpose of securing compliance with this Final Judgment and no other purpose, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to any defendant, made to its principal office be permitted subject to any legally recognized privilege (a) reasonable access during the office hours of such defendant, which may have counsel present, to all books, ledgers, accounts, correspondence memoranda, and other records and documents in the possession or under the control of such defendant relating to any matters contained in this Final Judgment, and (b) subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding any such matters. A defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and upon reasonable notice made to its principal office, shall submit reports in writing with respect to any of the matters contained in this Final Judgment as may from time to time be necessary and requested for the enforcement of said Final Judgment. No information obtained by the means provided in this section shall be divulged by any representative of the Department of Justice to any person

except a duly authorized representative of the Executive Branch of the United States and except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

I. Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or the carrying out of this Final Judgment, for the modification or termination of any of the provisions hereof, for enforcement of compliance herewith and for the punishment of violations hereof.

Dated this 12th day of November, 1970.

/s/ WILLIAM J. NEALON
United States District Judge