

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Civil Action No. CA-6733
)
 CONTINENTAL GRAIN COMPANY,) Filed: June 15, 1970
)
 Defendant.)

COMPLAINT

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this action against the defendant named herein and complains and alleges as follows:

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, as amended (15 U.S.C. §4), commonly known as the Sherman Act, in order to prevent and restrain the continuing violation by the defendant, as hereinafter alleged, of Section 1 of the Sherman Act (15 U.S.C. §1).

2. Defendant Continental Grain Company has offices, transacts business and is found within the Beaumont Division of the Eastern District of Texas. The violation of law hereinafter described has been and is being carried out in part within this Division and District.

DEFENDANT

3. Continental Grain Company (hereinafter referred to as "Continental") is made a defendant herein. Continental is a corporation organized and existing under the laws of the State of Delaware and has its principal place of business in New York, New York. The corporation operates an export grain elevator located in Beaumont, Texas.

DEFINITIONS

4. As used herein, the term:
- (a) "grain" means corn, wheat, rye, sorghums, barley, flaxseed, oats, pellets and meals;
 - (b) "Gulf Coast elevators" means export grain elevators located in Texas, Louisiana, Mississippi and Alabama;
 - (c) "export elevator" means a grain elevator from which grain is loaded onto an ocean-going vessel for transportation to a foreign destination;
 - (d) "tramp vessel" means an ocean-going vessel not sailing in accordance with a fixed published schedule

which is chartered to carry a full load of grain on a one-trip basis from the export elevator to a foreign port;

(e) "liner" means a common carrier vessel which sails according to a fixed published schedule;

(f) "F.O.B. sale" means a sale of grain in which the title and risk of loss passes to the buyer upon transfer of the grain from the export elevator to the vessel. The buyer arranges and pays for the transportation of the grain to the foreign destination;

(g) "C.I.F. sale" means a sale of grain in which the title and risk of loss does not pass to the buyer until delivery at the foreign destination. The seller arranges and pays for the transportation of the grain to the foreign destination.

TRADE AND COMMERCE

5. The United States is the leading exporter of grain in the world. Approximately two-thirds of the grain exported from the United States is shipped from export grain elevators located in ports along the Gulf Coast. The principal domestic grain exporters are large, integrated companies which purchase grain in the producing areas, temporarily store it in inland elevators, and eventually transport it by rail, barge, or truck to export elevators. From the export elevators grain passes to ocean-going vessels for transportation to

foreign destinations. Virtually all export grain is carried in tramp vessels, which are not common carriers and are not subject to the jurisdiction of the Federal Maritime Commission.

6. Stevedoring of grain at export elevators has traditionally been viewed as essentially maritime in nature. All the work is performed within the vessel. The function of the loading stevedore is to spread the grain evenly, to batten it down to minimize shifting of the cargo while at sea, and to segregate the various types and grades of grain and prevent intermingling during the journey. Since the vessel owner bears full responsibility for the seaworthiness of the vessel and proper stowage of cargo, both of which require proper stevedoring, stevedores perform at the direction of the master of the vessel.

7. Grain for export from Gulf Coast elevators is generally sold either on an F.O.B. or a C.I.F. basis. In F.O.B. sales, title and risk of loss pass to the buyer when the grain is loaded into the vessel. Hence the buyer is entitled to nominate the stevedore to be used in loading the vessel. In charters fixed by F.O.B. buyers the vessel owner customarily nominates the stevedore and absorbs the stevedoring cost. In charters fixed by C.I.F. sellers either the seller or the vessel owner, depending upon the terms of the charter, nominates

the stevedore and absorbs the stevedoring cost. Until recently many stevedoring companies competed for work at each Gulf Coast elevator, with the result that stevedoring rates were highly competitive.

8. The vessel owner has no control over the designation of the elevator where the loading is to occur. In F.O.B. sales the grain seller selects the export elevator subsequent to the negotiation of the sales contract. The seller informs the buyer-charterer that the grain will be delivered through a particular elevator, whereupon the buyer-charterer advises the vessel owner to present the vessel for loading at that elevator. The vessel owner has no alternative, short of breaching the charter, but to present the vessel as directed and to accept whatever conditions a particular elevator imposes on vessels loading at it. The current trend among large grain companies, such as defendant Continental, is to construct their own export elevators and to program their export sales so as to channel as much grain as possible through their own elevators.

9. Continental leases the Beaumont, Texas elevator from the Port of Beaumont Navigation District. The elevator, which Continental began to operate in 1965, has a working capacity of three million bushels of grain. During the period March 1965 through September 1966, the elevator handled approximately 105 million

bushels, nearly all of it for Continental's account.

During the period March 1965 through September 1966, 95 of the 158 tramp vessel loadings, or 60 per cent, represented F.O.B. sales. For the same period of time, approximately 50 per cent of the loadings involving C.I.F. sales (20% of total loadings) required the vessel owner to pay stevedoring costs.

10. In 1965 Continental and Atlantic & Gulf Grain Stevedoring Associates (hereinafter referred to as "A & G"), a joint venture whose ownership is divided equally between the John W. McGrath Corporation, a stevedoring company, and Continental Navigation Company, Inc., a wholly-owned subsidiary of Continental, informally agreed that A & G would be the resident stevedore and as such would perform all stevedoring at the elevator. The agreement remains in effect. During the period March 1965 through September 1966, A & G performed the stevedoring for all 158 tramp vessels which loaded at the elevator. The gross revenue from stevedoring performed at the elevator during the period March 1965 through September 1966 was approximately \$740,000. The net profit derived by Continental from stevedoring at the elevator during the above period was approximately \$150,000.

OFFENSE CHARGED

11. Beginning in 1965 and continuing up to and including the date of the filing of this complaint, defendant Continental has required all tramp vessel owners who are entitled to select stevedores, as a condition of acceptance of the vessel by the elevator for loading, to enter into contracts obligating them to hire A & G for all stevedoring work at the elevator, in unreasonable restraint of the above-described trade and commerce in grain stevedoring in violation of Section 1 of the Sherman Act (15 U.S.C. §1). Defendant will continue to impose this condition upon vessel owners unless the relief hereinafter prayed for is granted.

EFFECTS

12. The aforesaid offense has had the following effects among others:

(a) Vessel owners who have the right under the charter party to designate the loading port stevedore are precluded from exercising this right at the Continental Elevator, and are forced to use A & G;

(b) Stevedores other than A & G are precluded from obtaining work at the Continental Elevator;

(c) Competition among stevedores for work at the Continental Elevator has been eliminated.

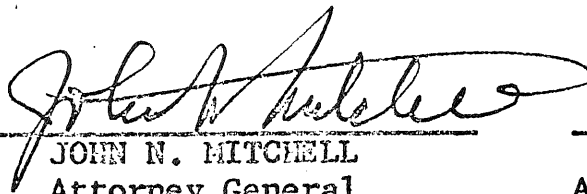
PRAYER

WHEREFORE, the plaintiff prays,


1. That the Court adjudge and decree that defendant Continental has unlawfully contracted in restraint of interstate trade and commerce in grain stevedoring in violation of Section 1 of the Sherman Act.
2. That defendant Continental be enjoined from requiring vessel owners who are entitled to select the stevedore to agree to hire only a designated stevedore, as a condition to being allowed to load at any elevator owned or operated by Continental.
3. That the defendant, and all other persons, firms, and corporations acting in its behalf or under its direction or control, be permanently enjoined from engaging in any practices or acts having the purpose or effect of continuing, reviving, or renewing the aforesaid violation of the Sherman Act, or any practice or act having a like or similar purpose or effect.

4. That the plaintiff have such other and further relief as the nature of the case may require and the Court may deem proper in the circumstances.

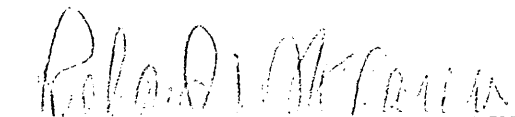
5. That the plaintiff recover the costs of this suit.



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