

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

BUNGE CORPORATION,

Defendant.

Civil Action No. 70-1546

Filed: June 15, 1970

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 Sections 1 and 2 of the Sherman Act (15 U.S.C. §§1 and 2).

2. Defendant Bunge Corporation has offices, transacts business and is found within the New Orleans Division of the Eastern District of Louisiana. The violation of law hereinafter described has been and is being carried out in part within this Division and District.

DEFENDANT

3. Bunge Corporation (hereafter referred to as "Bunge") is made a defendant herein. Bunge is a corporation organized and existing under the laws of the State of New York and has its principal place of business in New York, New York. The corporation owns and operates an export grain elevator located in Destrehan, Louisiana.

CO-CONSPIRATOR

4. Southern Stevedoring Company, Inc. (hereinafter referred to as "Southern") is made a co-conspirator herein. Southern is organized and exists under the laws of the State of Louisiana, and maintains its corporate headquarters in New Orleans, Louisiana.

DEFINITIONS

5. 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

6. 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.

7. 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.

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

9. 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 Bunge, 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.

10. The Bunge elevator at Destrehan, Louisiana commenced operations in January 1962. Only tramp vessels are permitted to load at the Bunge elevator. With a working capacity of seven million bushels, the elevator ranks second in the United States in terms of export volume. The volume of exports from this elevator was 120.5 million bushels in 1964, 107.5 million in 1965, and approximately 110 million from July 1966 to April 1967. Virtually all of the grain handled by the elevator was for Bunge's account. During the period 1962 to September 1966, 942 vessels loaded grain at the elevator, of which 495, or 53 per cent, represented F.O.B. sales.

11. In 1961, Bunge entered into a contract with Southern under the terms of which Southern became the resident stevedore at the elevator. The contract, which is presently in force, requires that Bunge appoint Southern whenever it controls the choice of stevedore. In 1965 Southern performed the stevedoring for 167 of the 169 vessels which loaded at the elevator, and during the first nine months of 1966 Southern stevedored all 140 vessels which loaded.

12. The gross revenue from stevedoring performed at the Bunge elevator approximates \$1 million per year. Under its agreement with Bunge, Southern pays Bunge a fixed fee per ton of grain loaded. In 1965 Southern paid approximately \$164,000 in fees and between 1962 and September 1966, approximately \$712,000.

OFFENSES CHARGED

13. Beginning about January 1962, and continuing up to and including the date of the filing of this complaint, the defendant Bunge and co-conspirator Southern have engaged in an unlawful combination and conspiracy to monopolize, and in unreasonable restraint of, the aforesaid interstate trade and commerce in grain stevedoring, in violation of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§1 and 2). Said offenses are continuing and will continue unless the relief hereinafter prayed for is granted.

14. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action between defendant and co-conspirator, the terms of which, among others, were that:

(a) Bunge would enter into a contract with Southern pursuant to which Southern would become the resident stevedoring company at the elevator;

(b) Bunge would inform vessel owners and charterers who were entitled to nominate the loading port stevedore that Bunge preferred that they hire Southern whenever they loaded at the Bunge elevator;

(c) Bunge would consistently seek to persuade vessel owners to accept a clause in the charter party granting the right to designate the loading port stevedore to Bunge as charterer;

(d) Bunge would perform various acts which would make it impossible for outside stevedores to compete with Southern for work at the Bunge elevator.

15. Beginning about January 1962 and continuing to the date of the filing of this complaint, defendant Bunge has, through various means, required those tramp vessel owners who are entitled to select stevedores, as a condition of acceptance of the vessel by the elevator for loading, to agree to hire Southern 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). Said offense is continuing and will continue unless the relief hereinafter prayed for is granted.

EFFECTS

16. The aforesaid offenses have had the following effects, among others:

(a) Vessel owners who have the right under the charter party to designate the loading stevedore are precluded from exercising this right and are forced to use Southern;

(b) Stevedores other than Southern are precluded from obtaining work at the Bunge Elevator;

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


PRAYER

WHEREFORE, the plaintiff prays:

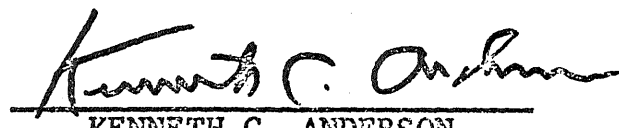
1. That the Court adjudge and decree that defendant Bunge has combined and conspired to unreasonably restrain and to monopolize interstate trade and commerce in grain stevedoring in violation of Sections 1 and 2 of the Sherman Act.
2. That the defendant, and all other persons, firms, and corporations 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 violations of the Sherman Act, or any practice or act having a like or similar purpose or effect.
3. That defendant be enjoined from:
 - (a) Attempting to cause vessel owners who are entitled to nominate the stevedore to hire a stevedore designated by Bunge at any elevator owned or operated by Bunge; and
 - (b) Hindering or impeding any stevedores from competing at any elevator owned or operated by defendant Bunge.

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.

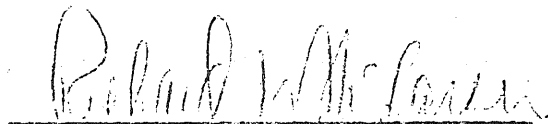
5. That the plaintiff recover the costs of this suit.



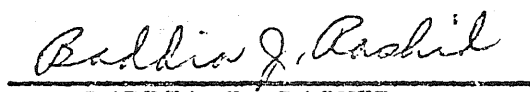
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