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9 UNITED STATES DISTRICT COURT
10
11 NORTHERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,)

13 Plaintiff,)

14 v.)

15 GREAT WESTERN SUGAR COMPANY;)
16 HOLLY SUGAR CORPORATION;)
17 CALIFORNIA AND HAWAIIAN SUGAR)
18 COMPANY;)
19 AMERICAN CRYSTAL SUGAR COMPANY;)
20 AMALGAMATED SUGAR COMPANY; and)
21 NATIONAL SUGARBEET GROWERS)
22 FEDERATION,)

23 Defendants.)

24 Civil No. 74-2674-SW

25 COMPLAINT

26 15 U.S.C. § 1
27 (Sherman Antitrust Act)

28 Filed: December 19, 1974

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

33 I

34 DEFINITIONS

35 1. As used herein:

- 36 (a) "Refined sugar" means any grade or type of saccharine
37 product derived from sugar beets or sugar cane
38 which contains sucrose, dextrose or levulose;
39
40 (b) "Refiner" means any company engaged in the processing
41 of sugar beets or the refining of raw cane sugar
42 into, and the sale of, refined sugar;

- (c) "Basis price" means the list price of refined sugar sold by a refiner f.o.b. its refinery or processing factory;
- (d) "Prepaid freight application," commonly known as a "prepay," means a portion of the delivered price for refined sugar equal in amount to a freight charge from a basing point to the customer's location;
- (e) "Delivered price" means the price of refined sugar delivered to the customer and generally consists of the basis price plus the prepaid freight application;
- (f) "Allowance" means a discount from delivered price;
- (g) "Effective selling price" means the price actually charged to the customer by the refiner and generally consists of the delivered price, less any allowance and
- (h) "The Market" means the States of Indiana, Illinois, Iowa, Minnesota, Wisconsin, North Dakota, South Dakota, Nebraska, Kansas, Colorado, Montana, Missouri, New Mexico, Oklahoma, Texas and Wyoming (east of the town of Rawlins). These states have customarily been described by refiners as the Chicago-West territory.

II

JURISDICTION AND VENUE

2. This complaint is filed 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 continuing violation by the defendants, as hereinafter alleged, of Section 1 of the Act (15 U.S.C. § 1).

1 3. The defendants California and Hawaiian Sugar Company
2 and Holly Sugar Corporation transact business and are found
3 within the Northern District of California.

4 III

5 DEFENDANTS

6 4. Each of the corporations named below is made a defendant
7 herein. Each is organized and exists under the laws of the
8 state, and has its principal place of business in the city
9 indicated below:

10 <u>Name of Corporation</u>	<u>State of</u> <u>Incorporation</u>	<u>Principal Place</u> <u>of Business</u>
11 Great Western Sugar Company	Delaware	Denver, Colorado
12 Holly Sugar Corporation	New York	Colorado Springs, Colorado
13 California and Hawaiian 14 Sugar Company	California	San Francisco, California
15 American Crystal Sugar 16 Company	New Jersey	Denver, Colorado
17 Amalgamated Sugar Company	Utah	Odgen, Utah
18 National Sugarbeet Growers 19 Federation	Colorado	Greeley, Colorado

20
21 5. On June 14, 1973, the defendant American Crystal Sugar
22 Company was dissolved. Its successor is the American Crystal
23 Sugar Company of Fargo, North Dakota, a Minnesota cooperative
24 association.

25 6. During all or part of the period covered by this complaint,
26 each of the defendant corporations except National Sugarbeet
27 Growers Federation was engaged in the business of processing and
28 selling refined sugar in The Market.

29 7. The National Sugarbeet Growers Federation is an agricul-
30 tural cooperative which is composed of sixteen member associations
31 of sugar beet growers located in ten Western States. Among other
32 things, the National Federation acts as a bargaining agent for

1 growers in contracting with refiners for the sale of the grower
2 sugar beets.

3 IV

4 CO-CONSPIRATORS

5 8. Various corporations, firms and individuals not made
6 defendants in this complaint participated as co-conspirators in
7 violation alleged herein and performed acts and made statements
8 in furtherance thereof.

9 V

10 TRADE AND COMMERCE

11 9. Refined sugar is made by processing sugar beets or by
12 refining raw sugar which is derived from crushed sugar cane.
13 Grocery sugar is sold to grocery wholesalers and retailers for
14 eventual sale to consumers; industrial sugar is sold in liquid
15 or dry form in bags or bulk to firms engaged in the preparation
16 and manufacture of food and beverages. Approximately 22 percent
17 of the sugar sold in the United States is sold as grocery sugar;
18 nearly all of the remainder is sold as industrial sugar.

19 10. Total domestic sales of refined sugar in 1972 amounted
20 to approximately 212 million hundredweights which had a value
21 of about \$2.5 billion. Of this, in excess of 66 million hundred-
22 weights or approximately \$770 million worth of refined sugar was
23 sold in The Market. Defendants accounted for over 53 percent of
24 refined sugar sales in The Market.

25 11. During the period of time covered by this complaint the
26 defendant California and Hawaiian Sugar Company received substanti-
27 quantities of raw sugar derived from sugar cane grown and crushed
28 in the State of Hawaii. There was a substantial and continuous
29 flow in interstate commerce of said raw sugar from the State of
30 Hawaii to the State of California where it was refined by defen-
31 dant California and Hawaiian Sugar Company and sold in The Market.
32

12. During the period of time covered by this complaint, cane refineries and sugar beet processing factories of defendants and co-conspirators were located in the various states of the United States and substantial quantities of the sugar refined and processed at those refineries and factories were sold and shipped across state lines to customers located throughout The Market. There was a substantial and continuous flow of refined sugar in interstate commerce from the cane refineries and sugar beet processing factories of defendants and co-conspirators to their customers.

VI

VIOLATION ALLEGED

13. Beginning sometime prior to 1970, the exact date being to the plaintiff unknown, and continuing thereafter at least through 1972, the defendants and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in The Market in violation of Section 1 of the Sherman Act, as amended (15 U.S.C. § 1). This combination and conspiracy may 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 among the defendants and co-conspirators, the substantial terms of which were, among others:

- (a) to fix and raise the basis prices of refined sugar;
- (b) to fix prepaid freight applications;
- (c) to eliminate, reduce and prevent giving of allowances to customers for refined sugar; and
- (d) to fix, raise, maintain and stabilize the effective selling price of refined sugar.

15. In formulating and effectuating the aforesaid combination and conspiracy, defendants and co-conspirators did those things

1 which, as hercinbefore alleged, they combined and conspired to do,
2 including, among other things, the following:

- 3 (a) caused brokers and other third parties to act as
4 go-betweens in carrying price information and
5 exchanging assurances on price actions between
6 and among refiners;
- 7 (b) discussed data and reached agreements concerning
8 the formulation of prepaid freight applications for
9 the purpose and with the effect of maintaining
10 uniform prepaid freight applications; and
- 11 (c) published basis price lists and prepaid freight
12 applicaton tables in accordance with agreements
13 reached.

14 VII

15 EFFECTS

16 16. The aforesaid combination and conspiracy has had the
17 following effects, among others:

- 18 (a) the price of refined sugar has been raised, fixed,
19 maintained and stabilized at artificial and non-
20 competitive levels;
- 21 (b) purchasers of refined sugar have been deprived of
22 free and open competition in the sale of refined
23 sugar; and
- 24 (c) competition between and among defendants and co-
25 conspirators has been restricted, suppressed and
26 restrained.

27 PRAYER

28 WHEREFORE, plaintiff prays:

29 1. That, pursuant to Section 5 of the Sherman Act (15 U.S.C.
30 § 5), the Court order summonses to be issued to those defendants
31 not found within the Northern District of California, commanding
32 them to appear and answer the allegations contained in the

1 complaint, and to abide by and perform such orders and decrees
2 as this Court may make in the premises.

3 2. That the Court adjudge and decree that the defendants
4 and co-conspirators have engaged in an unlawful combination and
5 conspiracy in restraint of the aforesaid interstate trade and
6 commerce in violation of Section 1 of the Sherman Act.

7 3. That each of the defendants, its subsidiaries, successors,
8 transferees, assignees, and the respective officers, directors,
9 partners, agents and employees thereof, and all other persons
10 acting or claiming to act on their behalf, be enjoined and
11 restrained from in any manner, directly or indirectly:

- 12 (a) continuing, maintaining or renewing the combination
13 and conspiracy hereinbefore alleged, or from
14 engaging in any other combination or conspiracy
15 having a similar purpose or effect, and from
16 adopting or following any practice, plan, program
17 or device having a similar purpose or effect; and
18 (b) communicating to any other refiner, or causing to
19 be communicated through any broker or third party
20 to any other refiner, information concerning prices
21 or other terms or conditions of sale of refined
22 sugar, except to the extent necessary in connection
23 with a bona fide purchase or sales transaction
24 between the parties to such communication.

25 4. That the plaintiff have such other, further, general and
26 different relief as the case may require and the Court may deem
27 just and proper under the circumstances.
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