

. UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ARCHER-DANIELS-MIDLAND
COMPANY, and GARNAC GRAIN
COMPANY, INC.,

Defendants.

Civil Action No. 70-1545

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 defendants named herein and complains and alleges as follows:

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted against the defendants 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 defendants, as hereinafter alleged, of Section 1 of the Sherman Act (15 U.S.C. §1).

2. Both defendants transact business and are 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.

DEFENDANTS

3. Archer-Daniels-Midland Company (hereinafter referred to as ADM) is made a defendant herein. ADM is

organized and exists under the laws of the State of Delaware, and maintains its corporate headquarters in Minneapolis, Minnesota.

4. Garnac Grain Co., Inc. (hereinafter referred to as Garnac) is made a defendant herein. Garnac is organized and exists under the laws of the State of New York, and maintains its corporate headquarters in New York, New York.

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. 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 defendants ADM and Garnac, 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. In August 1961, ADM and Garnac organized Adnac, Inc., a Louisiana corporation, for the purpose of constructing, owning, and leasing to ADM and Garnac a grain elevator facility at Destrehan, Louisiana. ADM and Garnac

own all the Adnac, Inc. stock in equal amounts. Adnac constructed an export grain elevator facility at Destrehan, Louisiana, and then leased it to ADM and Garnac. The elevator is operated by ADM and Garnac pursuant to the terms of the joint venture agreement entered into on January 15, 1963, and through the medium of the St. Charles Grain Elevator Company, an unincorporated company which manages the elevator. The St. Charles Elevator is one of two elevators located at Destrehan, Louisiana, which have transformed Destrehan into the principal grain export location in the United States. Only tramp vessels are permitted to load at the St. Charles Elevator.

11. The St. Charles Elevator commenced operation in September 1963. The elevator has a working capacity of 6.25 million bushels. During fiscal 1965 the elevator handled 103.2 million bushels. Virtually all the grain handled by the St. Charles Elevator is for the account of ADM and Garnac. During the period September 1963 through September 1966, 244 of the 404 vessel loadings, or 60.5 per cent, represented F.O.B. sales.

12. In September 1963, the St. Charles Elevator entered into a one-year contract with T. Smith & Son, Inc. (hereinafter referred to as Smith), pursuant to which Smith became the resident stevedore at the elevator and undertook to perform all stevedoring at the elevator. The contract has been renewed each succeeding year. Smith has performed the stevedoring on all 404 vessels which loaded at the St. Charles Elevator since commencement of elevator operations. The gross revenues from stevedoring performed at the St. Charles Elevator approximates \$700,000 per year.

St. Charles Elevator earned a gross profit of approximately \$110,000 per year from the stevedoring service, which profit is divided equally between ADM and Garnac.

OFFENSE CHARGED

13. Beginning in 1963, and continuing up to and including the date of the filing of this complaint, defendants have 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 Smith 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). Defendants will continue to impose this condition upon vessel owners, unless the relief hereinafter prayed for is granted.

EFFECTS

14. 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 St. Charles Elevator and are forced to use Smith;

(b) Stevedores other than Smith are precluded from obtaining work at the St. Charles Elevator;

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

PRAYER

WHEREFORE, the plaintiff prays:

1. That the Court adjudge and decree that defendants ADM and Garnac have unlawfully contracted in restraint of

interstate trade and commerce in grain stevedoring in violation of Section 1 of the Sherman Act.

2. That the defendants 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 ADM and Garnac.

3. That the defendants and all other persons, firms and corporations acting in their behalf or under their 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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