

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff

v.

AIR CONDITIONING AND
REFRIGERATION WHOLESALERS;
ALLIED CHEMICAL CORPORATION;
E. I. du PONT de NEMOURS
AND COMPANY;
KAISER ALUMINUM & CHEMICAL
CORPORATION;
KAISER ALUMINUM & CHEMICAL
SALES, INC.;
PENNWALT CORPORATION;
RACON INCORPORATED; and
UNION CARBIDE CORPORATION,

Defendants

Civil No. C70-829

Filed: August 28, 1970

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above named defendants, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted against the above named 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 continuing violations, as hereinafter alleged, of Sections 1 and 2 of the Sherman Act.

2. Each of the defendants herein transacts business and is found within the Northern District of Ohio, Eastern Division.

II

DEFENDANTS

3. Each of the corporations named below is hereby made a defendant herein. Each of these defendants is organized and exists under the laws of the state, and has its principal place of business in the city, indicated:

<u>Name of Corporation</u>	<u>State of Incorporation</u>	<u>Place of Business</u>	<u>Hereinafter Referred to</u>
E. I. du Pont de Nemours and Company	Delaware	Wilmington, Delaware	du Pont
Racon Incorporated	Delaware	Wichita, Kansas	Racon
Union Carbide Corporation	New York	New York, New York	Carbide
Allied Chemical Corporation	New York	New York, New York	Allied
Kaiser Aluminum & Chemical Corporation	Delaware	Oakland, California)	Kaiser
Kaiser Aluminum & Chemical Sales, Inc.	California	Oakland, California)	
Pennwalt Corporation	Pennsylvania	Philadelphia, Pennsylvania	Pennwalt

Within the period covered by this complaint these defendants have engaged in the business of manufacturing and selling refrigerant gas throughout the United States.

4. Air Conditioning and Refrigeration Wholesalers (hereinafter referred to as "ARW") is hereby made a defendant herein. The ARW is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business at Dearborn, Michigan. Its membership consists of air conditioning and refrigeration wholesalers.

5. Whenever in this complaint reference is made to any act, deed, or transaction of a corporate defendant, such allegation shall be deemed to mean that such corporation engaged in such act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of corporate business or affairs.

III

CO-CONSPIRATORS

6. Various corporations and individuals not made defendants herein have participated as co-conspirators in the offenses alleged herein and have performed acts and made statements in furtherance thereof. These co-conspirators include, but are not limited to, members of the defendant ARW.

IV

DEFINITIONS

7. As used herein, the term "refrigerant gas" means gas created by various combinations of carbon, chlorine, fluorine, and in some instances hydrogen, which is suitable for use in air conditioning and refrigeration equipment.

8. As used herein, the term "air conditioning and refrigeration wholesaler" means a business concern which purchases and stocks a wide range of air conditioning and refrigeration equipment, parts, and supplies (including refrigerant gas) from the manufacturers thereof and resells them to air conditioning and refrigeration dealers, contractors, servicemen, and industrial concerns, and which does not sell the equipment, parts, and supplies at retail (except as required by law), or install equipment or perform repair service.

TRADE AND COMMERCE

9. Refrigerant gas is sold by refrigerant gas manufacturers (a) to air conditioning and refrigeration equipment manufacturers (hereinafter referred to as "OEMs") for use in original equipment, and (b) for replacement purposes in air conditioning and refrigeration equipment. Until 1953, du Pont was the only refrigerant gas manufacturer in the United States because of one or more patents which it controlled. In 1953, Allied began to manufacture refrigerant gas in the United States, followed by Pennwalt in 1956, Carbide in 1959, Kaiser in 1963, and Racon in 1965. These six companies (hereinafter collectively referred to as "the defendant manufacturers") constitute the only refrigerant gas manufacturers in the United States. Their total sales of refrigerant gas exceed \$86 million annually, over \$52 million of which is for replacement purposes.

10. The defendant manufacturers place the refrigerant gas which they manufacture (a) in bulk railroad tank cars and motor trucks, (b) in cylinders containing one ton of the product, and (c) in cylinders containing 145 pounds and lesser amounts. The price per pound of refrigerant gas charged by the manufacturers decreases as the size of the container in which such gas is placed increases. However, it is the practice of the defendant manufacturers to sell refrigerant gas in bulk railroad tank cars and motor trucks only to OEMs. Refrigerant gas for replacement purposes is sold by the defendant manufacturers in cylinders containing a ton of such gas and in smaller cylinders.

11. Almost all refrigerant gas sold for replacement purposes is sold through air conditioning and refrigeration wholesalers. The majority of these air conditioning and refrigeration wholesalers are members of the defendant ARW; ARW members purchase over 50 percent of the refrigerant gas sold by the defendant manufacturers for replacement purposes.

12. The defendant manufacturers have stocks of refrigerant gas at locations throughout the United States and will ship such gas to air conditioning and refrigeration wholesalers on a freight prepaid basis regardless of where such wholesalers are located. During the period covered by this complaint, the defendant manufacturers have sold and shipped substantial quantities of refrigerant gas for replacement purposes in interstate commerce in states other than the states where such gas was manufactured.

13. Concerns other than air conditioning and refrigeration wholesalers also desire to purchase refrigerant gas directly from the defendant manufacturers for replacement purposes. These concerns include (a) OEMs which will not sell refrigerant gas for replacement purposes without permission of the defendant manufacturer or manufacturers from which each buys; (b) wholesalers other than air conditioning and refrigeration wholesalers, such as plumbing and heating wholesalers, welding supply wholesalers, chemical wholesalers, ship chandlers, and wholesalers which have service facilities available to them to repair air conditioning and refrigeration equipment; and (c) air conditioning and refrigeration dealers, contractors, servicemen, and industrial concerns. Some of these concerns, as well as some air conditioning and refrigeration wholesalers, have the facilities to fill smaller

cylinders with refrigerant gas and therefore would like to buy refrigerant gas in railroad tank car or motor truck quantities, or in cylinders containing one ton of refrigerant gas.

VI

OFFENSES ALLEGED

14. Beginning in or about 1953, the exact date being to the plaintiff unknown, and continuing thereafter up to and including the date of the filing of this complaint, the defendants and the co-conspirators have engaged in a combination and conspiracy to monopolize the hereinbefore described interstate trade and commerce in refrigerant gas for replacement purposes, in violation of Section 2 of the Act of Congress of July 2, 1890, as amended, (15 U.S.C. § 2), commonly known as the Sherman Act.

15. Beginning in or about 1953, the exact date being to the plaintiff unknown, and continuing thereafter up to and including the date of the filing of this complaint, the defendants and the co-conspirators have engaged in a combination and conspiracy in unreasonable restraint of the hereinbefore described interstate trade and commerce in refrigerant gas for replacement purposes, in violation of Section 1 of the Act of Congress of July 2, 1890, as amended, (15 U.S.C. § 1), commonly known as the Sherman Act.

16. The alleged combinations and conspiracies have consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators, the substantial terms of which have been and are to:

- (a) Exclude business concerns other than air conditioning and refrigeration wholesalers from competing with defendant ARW's members in the sale of refrigerant gas for replacement purposes; and
- (b) Restrain competition, including price competition, in the sale of refrigerant gas for replacement purposes.

17. In furtherance of the alleged combinations and conspiracies, the defendants and co-conspirators have done those things which they combined and conspired to do, including, among others:

- (a) Agreed that the defendant manufacturers would boycott business concerns other than air conditioning and refrigeration wholesalers in the sale of refrigerant gas for replacement purposes;
- (b) Agreed that refrigerant gas in cylinders containing less than one ton would not be shipped for replacement purposes by the defendant-manufacturers to any location other than to the purchaser's principal place of business or qualified branch location;
- (c) Agreed that the defendant manufacturers would ship on the order of an air conditioning and refrigeration wholesaler, cylinders containing one ton of refrigerant gas only to the job sites of customers to fill complete single systems at one time; and

- (d) Agreed that the members of ARW would boycott defendant manufacturers not distributing such gas for replacement purposes in accordance with the agreements set forth in subparagraphs (a) through (c) of this paragraph 17.

VII

EFFECTS

18. The offenses alleged in this complaint have had the following effects, among others:

- (a) Competition between air conditioning and refrigeration wholesalers, including ARW members, and others in the sale of refrigerant gas for replacement purposes has been restrained and eliminated;
- (b) Competition among air conditioning and refrigeration wholesalers, including ARW members, in the sale and purchase of refrigerant gas for replacement purposes has been restrained;
- (c) Customers for refrigerant gas for replacement purposes have been deprived of the benefit of free and open competition in the purchasing of such gas;
- (d) Competition to supply all the requirements of refrigerant gas for replacement purposes to customers having requirements for such gas at their various locations throughout the United States has been restrained and eliminated; and

- (e) Customers of refrigerant gas for replacement purposes have been deprived of purchasing such gas from persons or concerns of their choice at competitive prices.

PRAYER

WHEREFORE, the plaintiff prays:

1. That the Court adjudge and decree that each of the defendants has engaged in the combinations and conspiracies in restraint of and to monopolize the aforesaid trade and commerce in violation of Sections 1 and 2 of the Sherman Act.
2. That the defendant ARW be dissolved within 60 days of the entry of a final judgment herein.
3. That each of the defendant refrigerant gas manufacturers, its subsidiaries, successors, directors, agents, and employees thereof and all other persons acting or claiming to act on behalf thereof, be perpetually enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining, or renewing the combinations and conspiracies alleged in this complaint to restrain and monopolize interstate trade and commerce, or from engaging in any other combination or conspiracy having a similar purpose or effect, or from adopting or following any practice, plan, program, or device having a similar purpose or effect.
4. That for such period of time as the Court finds necessary to restore competition in the sale of refrigerant gas for replacement purposes, each defendant manufacturer be required, pursuant to such orders as the Court deems proper, to:

- (a) Sell refrigerant gas to any buyer of refrigerant gas pursuant to the defendant manufacturer's customary credit and quantity requirements;
- (b) Ship refrigerant gas on the order of any buyer of refrigerant gas to any location in the United States designated by such buyer; and
- (c) Sell refrigerant gas in quantities larger than 145 pounds to any buyer of refrigerant gas which is technically qualified to use such gas to fill smaller cylinders.

5. That the plaintiff have such other relief as the Court may determine to be necessary.

6. That the plaintiff recover the costs of this action.



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