

ROBERT J. STAAL
MARK F. ANDERSON
Antitrust Division
Department of Justice
1450 Golden Gate Avenue - Room 16432
Box 36046
San Francisco, California 94102
Telephone: (415) 556-6300

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil No. 74-2675-ACW
v.)	
)	<u>COMPLAINT</u>
CALIFORNIA AND HAWAIIAN SUGAR)	
COMPANY;)	15 U.S.C. § 1
HOLLY SUGAR CORPORATION; and)	(Sherman Antitrust Act)
CONSOLIDATED FOODS CORPORATION,)	
)	Filed: December 19, 1974
Defendants.)	
)	

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:

I

DEFINITIONS

1. As used herein:

- (a) "Refined sugar" means any grade or type of saccharine product derived from sugar beets or sugar cane which contains sucrose, dextrose or levulose;
- (b) "Refiner" means any company engaged in the processing of sugar beets or the refining of raw cane sugar 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 California and Arizona and the Cities of Las Vegas and Reno, Nevada. These states and cities have customarily been described by refiners as the California-Arizona 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).

3. Each of the defendants transacts business and is found within the Northern District of California.

III

DEFENDANTS

4. Each of the corporations named below is made a defendant herein. Each is organized and exists under the laws of the state,

and has its principal place of business in the city, indicated below:

<u>Name of Corporation</u>	<u>State of Incorporation</u>	<u>Principal Place of Business</u>
California and Hawaiian Sugar Company	California	San Francisco, California
Holly Sugar Corporation	New York	Colorado Springs, Colorado
Consolidated Foods Corporation	Maryland	Chicago, Illinois

5. During all or part of the period covered by this complaint, each of the defendant corporations was engaged in the business of processing and selling refined sugar in The Market.

IV

CO-CONSPIRATORS

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

V

TRADE AND COMMERCE

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

8. Total domestic sales of refined sugar in 1972 amounted to approximately 212 million hundredweights which had a value of

about \$2.5 billion. Of this, in excess of 23 million hundred-weights or approximately \$268 million worth of refined sugar was sold in The Market. Defendants accounted for over 69 percent of refined sugar sales in The Market.

9. During the period of time covered by this complaint, the defendant California and Hawaiian Sugar Company received substantial quantities of raw sugar derived from sugar cane grown and crushed in the State of Hawaii. There was a substantial and continuous flow in interstate commerce of said raw sugar from the State of Hawaii to the State of California where it was refined by defendant California and Hawaiian Sugar Company and sold in The Market.

10. During the period of time covered by this complaint, substantial quantities of refined sugar, refined or processed in the State of California, was sold and shipped by defendant and co-conspirator corporations to customers located in the State of Arizona and in the Cities of Las Vegas and Reno, Nevada. There was a substantial and continuous flow of refined sugar in interstate commerce from the cane refinery and the sugar beet processing factories of defendants and co-conspirators in the State of California to customers located in the State of Arizona and in the Cities of Las Vegas and Reno, Nevada.

VI

VIOLATION ALLEGED

11. 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 herein-after prayed for is granted.

12. 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.

13. In formulating and effectuating the aforesaid combination and conspiracy, defendants and co-conspirators did those things which, as hereinbefore alleged, they combined and conspired to do, including, among other things, the following:

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

VII

EFFECTS

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

- (a) the price of refined sugar has been raised, fixed, maintained and stabilized at artificial and non-competitive levels;

- (b) purchasers of refined sugar have been deprived of free and open competition in the sale of refined sugar; and
- (c) competition between and among defendants and co-conspirators has been restricted, suppressed and restrained.

PRAYER

WHEREFORE, plaintiff prays:

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

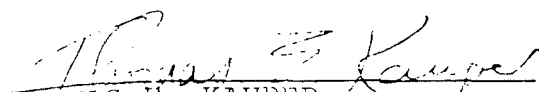
2. That each of the defendants, its subsidiaries, successors, transferees, assignees, and the respective officers, directors, partners, agents and employees thereof, and all other persons acting or claiming to act on their behalf, be enjoined and restrained from in any manner, directly or indirectly:

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

3. That the plaintiff have such other, further, general and different relief as the case may require and the Court may deem

just and proper under the circumstances.

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


THOMAS E. KAUPER
Assistant Attorney General

ROBERT J. STAAL


BADDIA J. RASHID

MARK F. ANDERSON

ANTHONY E. DESMOND

CHRISTOPHER S. CROOK

Attorneys,
Department of Justice

GLENDA R. JERMANOVICH

Attorneys,
Department of Justice

Antitrust Division
Department of Justice
Box 36046
450 Golden Gate Avenue
San Francisco, California
94102