

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) CASE NO. 98-361-CIV-T-24C
)
 NORSK HYDRO USA INC. and) Filed: February 19, 1998
 FARMLAND INDUSTRIES, INC.,)
)
 Defendants.)

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 under Section 4 of the Sherman Act, 15 U.S.C. § 4, as amended, in order to prevent and restrain violations by defendants of Section 1 of the Sherman Act, 15 U.S.C. § 1, and this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1337.

2. Defendants conduct business in the Middle District of Florida within the meaning of 15 U.S.C. § 22 and 28 U.S.C. § 1391. Some of the unlawful acts described herein were

conceived, performed, or made effective within Hillsborough County, Florida,

II.

DEFENDANTS

3. Norsk Hydro USA Inc. ("Hydro") is a subsidiary of Norsk Hydro a.s ("Norsk AS"), a Norwegian corporation, which is majority owned by the Government of Norway. Hydro is headquartered in New York City, New York, and is a holding company with various subsidiaries. One of the indirect subsidiaries of Hydro, Hydro Agri Ammonia, Inc. ("Hydro Agri"), is a wholesale distributor of ammonia headquartered in Tampa, Florida. At the time of the alleged violation, Norsk AS controlled approximately twenty-five percent of the world trade of ammonia.

4. Farmland Industries, Inc. ("Farmland") is a cooperative headquartered in Kansas City, Missouri, which provides products and services to its members, who are primarily farmers and ranchers. Through a joint venture known as Farmland Hydro Limited Partnership ("FHLP"), which Farmland formed with an affiliate of Hydro in November 1991, Farmland is also engaged in manufacturing and distributing phosphatic fertilizers.

III.

TRADE AND COMMERCE

5. Fertilizer manufacturers purchase ammonia for use as a primary component in the production of phosphatic fertilizer.

During the time of the alleged violation, phosphatic fertilizer manufacturers located in Florida, including defendants, purchased ammonia produced outside Florida and outside the United States.

6. A substantial percentage of the ammonia imported into the United States enters the country at Tampa, Florida. This cause of action concerns the sale of an ammonia terminal and pipeline interest located in the Port of Tampa, Florida (hereinafter referred to as the Tampa Facility) and used for the delivery of ammonia from abroad to phosphatic fertilizer manufacturers. Many of the transactions related to the sale by auction of the Tampa Facility were in the flow of and substantially affected interstate and foreign trade and commerce.

7. Defendants sought to acquire the Tampa Facility in order to secure ammonia supplies from outside the United States for the FHLP fertilizer plant located in Polk County, Florida. Defendants also sought to acquire the Tampa Facility to facilitate Hydro's sales of ammonia produced by affiliates of Hydro based in Trinidad to FHLP and third parties inside the United States. During the time of the alleged violation, a substantial quantity of the ammonia transported through the Tampa Facility was transported through the Facility in the flow of foreign trade and commerce and in a manner substantially affecting interstate and foreign trade and commerce.

8. Phosphatic fertilizer is sold to retailers and end-users by manufacturers and distributors throughout the United

States. Manufacturers and distributors of phosphatic fertilizer, including defendants, sell or transport phosphatic fertilizer to customers located throughout the United States as well as outside the United States.

9. The business activities of the defendants were within the flow of, and substantially affected, interstate and foreign trade and commerce.

IV.

ALLEGED VIOLATION

10. During 1991 the Tampa Facility, which was then owned by the Royster Company ("Royster"), consisted of an ammonia terminal and a one-half interest in a pipeline system that was connected to the terminal. Seminole Fertilizer Corporation ("Seminole") owned the other one-half interest in the pipeline system.

11. On April 8, 1991, Royster filed for bankruptcy protection, and in December 1991 the Federal Bankruptcy Court in the Middle District of Florida, Tampa Division, issued an order approving overbid procedures for the sale of the Tampa Facility at auction. The auction was scheduled for March 12, 1992.

12. Representatives of defendants and Seminole met on March 5, 1992, at the Rihga Royal Hotel in New York, New York, and discussed sharing pipeline capacity and the cost of bidding on the Tampa Facility. At the conclusion of the meeting, representatives of defendants and Seminole reached a tentative agreement, which was later reduced to writing.

13. On March 9 and March 10, 1992, representatives of defendant Hydro and Seminole discussed the terms of the agreement by telephone.

14. Prior to the execution of the agreement described in paragraph 15 below, representatives of Hydro and Seminole were informed that a third bidder that had completed the requirements for bidding at the auction of the Tampa Facility had withdrawn from the bidding.

15. Two hours before the scheduled auction on March 12, 1992, defendant Hydro and Seminole executed a written agreement, which provided that defendant Hydro would receive bid support of up to \$2.5 million from Seminole if necessary to defeat a competing bid. In exchange, defendant Hydro agreed to give Seminole increased pipeline capacity if defendant Hydro was the successful bidder. This agreement had the effect of eliminating Seminole, defendant Hydro's chief rival, as a viable competing bidder for the Tampa Facility. Almost immediately after signing the agreement, Seminole stated that it would not be attending the auction.

16. Moments before the beginning of the auction of the Tampa Facility, a representative of Seminole appeared at the auction site and stated that Seminole was withdrawing from the bidding, leaving defendant Hydro as the only remaining bidder.

17. Defendants intended for the Tampa Facility to be an asset of FHLP after the Tampa Facility had been acquired by defendant Hydro.

18. Defendant Farmland participated in the negotiations leading to the March 12 agreement, assented to Hydro's execution of the agreement on its behalf as a partner in FHLP, and directly benefitted from the agreement because of its partnership with Hydro.

PRAYER

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that the defendants entered into an unlawful agreement in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;

2. That defendants, their officers, directors, agents, employees, and successors, and all other persons acting or claiming to act on behalf of any of them, be enjoined, restrained, and prohibited for a period of ten years from, in any manner, directly or indirectly, soliciting, entering, or attempting to enter any agreement with any actual or potential competitor to submit any jointly determined bids for the acquisition of any asset used principally in the manufacture, processing, production, storage, distribution, or sale of ammonia ("ammonia asset") located in the United States, where:


a. The purpose or effect of any such jointly determined bid is to eliminate or suppress competition; and

b. Before or at the time of submitting any such jointly determined bids, defendants do not disclose to the seller of the ammonia asset and the person administering the sale of the asset that a jointly determined bid is being submitted, the nature of the joint bid arrangement, and with whom the joint bid is being submitted;

3. That plaintiff have such other and further relief as the Court may deem just and proper; and

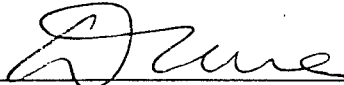
4. That plaintiff recover the costs of this action.

Dated: January 30, 1998



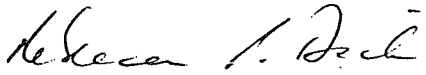
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