

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 RMI COMPANY; CRUCIBLE, INC.;)
 LAWRENCE AVIATION INDUSTRIES,)
 INC.; MARTIN MARIETTA)
 ALUMINUM, INC.; and TITANIUM)
 METALS CORPORATION OF AMERICA,)
)
 Defendants.)

Civil Action No. 78-1108

filed: 3/25/80

COMPETITIVE IMPACT STATEMENT

The United States of America, Plaintiff herein, has this day submitted a proposal for a consent judgment in this proceeding. The proposed Final Judgment, if entered by the Court, would terminate this action as to defendants RMI Company, Crucible, Inc., Lawrence Aviation Industries, Inc., and Titanium Metals Corporation of America. Defendant Martin Marietta Aluminum, Inc. is not a party to the consent judgment, and this action continues as to it. Plaintiff hereby respectfully submits this Competitive Impact Statement pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. §16.

I

Nature and Purpose of the Proceeding

This is a civil antitrust action brought under Section 4 of the Sherman Act (15 U.S.C. §4) to prevent and restrain violation of Section 1 of said Act. Named as defendants are five companies engaged in the production and sale of titanium mill products.

The Complaint alleges that, beginning at least as early as 1970 and continuing until approximately 1976, defendants and their co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce, in violation of §1 of the Sherman Act. This combination and conspiracy consisted of a continuing agreement, understanding and concert of action, the substantial terms of which were to raise, fix, maintain and stabilize the prices of titanium mill products. The Complaint also alleges that the combination and conspiracy charged may recur, and asks the Court to permanently enjoin each defendant and all persons acting on its behalf from continuing, maintaining or renewing the alleged combination and conspiracy or from engaging in any other combination or conspiracy with a similar purpose or effect.

The Complaint was filed on September 28, 1978. The same day a Grand Jury for the Western District of Pennsylvania returned an indictment charging four of the defendants herein (RMI Company, Crucible, Inc., Lawrence Aviation Industries and Martin Marietta Aluminum, Inc.) and five of their employees (J. William Price, Jr., Andrew N. Eshman, Robert E. Thomas, Gerald Cohen and George Herman) with a felony violation of §1 of the Sherman Act, 15 U.S.C. §1, based on the same facts that gave rise to this action. This indictment named Titanium Metals Corporation of America ("TMCA") and certain of its employees as unindicted co-conspirators. One defendant entered a plea of guilty and was sentenced before trial. Six defendants entered pleas of nolo contendere before trial 1/ and were sentenced thereon. The remaining

1/ Two defendants pled to a superseding felony information as part of a Rule 11 plea agreement with the Government. As to them a motion for severance was granted and thereafter the indictment was dismissed.

two defendants entered pleas of nolo contendere after three days of trial. The court sentenced the individual defendants to a total of 15 years imprisonment, of which all but 195 days was suspended. Fines for all corporate and individual defendants totalled \$1,242,500.

II

The Nature of the Alleged Violation

Titanium is a silvery-gray semiprecious metal used predominantly in aircraft and aerospace applications. The titanium is extracted from ore and converted into a material called sponge. This sponge is then melted to form ingots, which in turn are made into mill products - bar, billet, plate, sheet and strip. It is these mill products that are alleged to have been the object of the price fixing conspiracy charged. The mill product producers named as defendants in the Complaint accounted for the great majority of all titanium mill products produced during the period of the conspiracy.

The Government would have been prepared to prove at trial that representatives of TMCA, RMI, Lawrence Aviation, and Crucible began discussing and agreeing on prices for various titanium mill products in 1970, and continued this activity until 1976. In 1973, the conspiracy was joined by representatives of Martin Marietta, who also remained in the conspiracy until 1976. The primary focus of the conspiracy was on price lists issued and/or used by the defendants; in all, more than 100 price lists were subject to agreement among defendants. In addition, TMCA and RMI on one occasion reached agreement on prices they would submit in response to a request for a sealed bid.

Defendants had telephone conversations and face-to-face meetings and exchanged price lists through the mails. There were no group sessions, however. All contacts were one-on-one, involving representatives of only two companies. Some people involved had no contact with some others of their co-conspirators. Moreover, the only defendant company involved in every price list agreement was TMCA; none of the other defendant companies made all the mill products that were the subject of agreement. Crucible, for example, made only bar and certain forms of sheet and strip. Likewise, Martin Marietta made only bar and billet.

The conspiracy ended in 1976. On November 2, 1976, TMCA approached the Department of Justice and confessed that certain of its employees had been engaged in fixing prices. The investigation leading to the filing of the indictment and complaint was begun on the basis of the information provided by TMCA.

III

Explanation of Proposed Consent Judgment

The proposed Final Judgment, if entered by the Court, will terminate this action as to defendants RMI Company, Crucible, Inc., Lawrence Aviation Industries, Inc., and Titanium Metals Corporation of America [hereafter referred to as "defendants"]. The Court will retain jurisdiction over this matter for such further proceedings as may be required to interpret, modify or enforce the proposed judgment.

A. Scope of the Judgment

The proposed consent judgment is, by its terms, in effect for 10 years from the date of entry. Pursuant to Section III, the decree applies to defendants and to each of their officers,

directors, agents, employees, subsidiaries, successors and assigns and to all other persons in active concert with any of them who receive actual notice of this Final Judgment. In addition, pursuant to Section V of the decree, the judgment will apply to any party that purchases or otherwise acquires all or substantially all of the assets used by any defendant in the manufacture and/or sale of titanium. Excepted, however, are lawful transactions solely within a defendant company or among a defendant and certain related companies. Also excepted are activities outside the United States, its territories and possessions which do not directly or indirectly affect the commerce of the United States.

B. Prohibited Conduct

Section IV(A) of the proposed decree enjoins the defendants from entering into or otherwise participating in any agreement to fix prices or other terms or conditions of sale of titanium mill products or to submit non-competitive bids for titanium mill products. Section IV(B) prohibits defendants from directly communicating to or exchanging with any other person engaged in the manufacture and/or sale of titanium any price or term or condition of sale. This section also prohibits defendants from communicating such information to any association or other body comprised of or organized by titanium mill product producers. Section IV(B) does contain a proviso, however, to the effect that these prohibitions shall not preclude any defendant from independently negotiating for, entering into or carrying out a bona fide sale or purchase. This exception was necessary because the titanium industry is one in which, historically, many companies that compete in the manufacture of mill products also maintain customer/supplier relationships with

regard to intermediate manufacture, raw materials, and/or the mill products themselves.

C. Defendants' Affirmative Obligations

Sections VI and VII of the proposed decree impose certain affirmative obligations on defendants which are designed to ensure, to the extent possible, that their employees comply with the terms of the decree and with the strictures of the federal antitrust laws.

Section VI requires that each defendant furnish a copy of the decree to each of its officers and directors, and to each of its employees and agents who are engaged in, responsible for, or have authority over pricing or selling titanium mill products made or sold in the United States. Copies of the decree are also to be furnished to each of those individuals' successors.

Under Section VII, each defendant is required, for the duration of the proposed Final Judgment, to furnish a copy of the decree annually to each of its directors, each officer having management responsibility for manufacture, pricing or sale of titanium mill products and to each employee and agent engaged in or having responsibility for or authority over pricing or sale of titanium mill products. In addition, each defendant must each year submit to these individuals a written directive setting forth the company's policy of compliance with the Sherman Act and with this Final Judgment, meet in groups or individually with each of these persons to review the antitrust laws and terms of the Final Judgment, meet individually with each person to discuss problems related to compliance with the antitrust laws or the decree,^{2/} and

^{2/} An exception is made for directors, for whom a group meeting is permissible.

receive from each of these individuals a signed certificate acknowledging that the individual has received and understands the decree and has been advised of the consequences of noncompliance. Each defendant is also required to file each year with the United States a sworn statement setting forth all steps it has taken to discharge its obligations under this section of the decree and listing all individuals covered by the program.

D. Effect of the Proposed Judgment on Competition

The prohibitions contained in Section IV of the Judgment are designed to ensure that the defendants will act independently in determining the prices, terms and conditions at which they will sell or offer to sell titanium mill products. The affirmative obligations of Sections VI and VII are directed toward reminding the defendants' employees of their obligations under the decree in order to avoid a repetition of behavior that occurred in the titanium mill products industry during the conspiracy period. Compliance with the proposed Judgment will prevent price collusion among the defendants in the sale of titanium mill products.

E. Effect of the Proposed Judgment on the Government's Potential Damage Claims

The Department of Defense and other parts of the United States Government are purchasers of aircraft and other items containing titanium mill products. Consequently, the United States may have claims for damages against the defendants in this case. The Judgment will not adversely affect those claims. By a stipulation entered into by the Government and the defendants and filed with this Judgment, the Government has reserved its right to bring suit for damages at a later date. Defendants have agreed in the stipulation

that such a suit, if filed, will for all purposes be deemed filed on September 28, 1978 (the date of the complaint that is to be settled by this Judgment) and that nothing in this action will operate as a bar or defense to the suit. The United States' potential damage claims are therefore not compromised in any way by the entry of this Judgment.

IV

Remedies Available to Private Plaintiffs

Any potential private plaintiff who might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal or equitable remedies that they would have had were the proposed consent judgment not entered. As to these plaintiffs, however, the statute of limitations, which has been tolled during the pendency of this action pursuant to 15 U.S.C. §16(i) will begin to run again (with regard to suits against the defendants) one year after entry of this Final Judgment. Moreover, pursuant to Section 5(a) of the Clayton Act (15 U.S.C. §16(a)), this judgment may not be used as prima facie evidence against a defendant in private litigation.

V

Procedure Available for Modification of the Proposed Consent Judgment

The proposed Final Judgment is subject to a stipulation between the Government and the defendants which provides that the Government may withdraw its consent to the proposed Judgment any time before the Court has found that entry of the proposed Judgment is in the public interest. By its terms, the proposed Judgment provides for the Court's retention of jurisdiction of this action in order to permit any

of the parties to apply to the Court for such orders as may be necessary or appropriate for the modification of the Final Judgment.

As provided by the Antitrust Procedures and Penalties Act (15 U.S.C. §16), any person wishing to comment upon the proposed Judgment may, within the sixty-day comment period, submit written comments to the United States Department of Justice, Attention: John W. Clark, Chief, Special Trial Section, Antitrust Division, Washington, D. C. 20530. Such comments and the Government's response to them will be filed with the Court and published in the Federal Register. The Government will evaluate all such comments to determine whether there is any reason for withdrawal of its consent to the proposed Judgment.

VI

Alternatives to the Proposed Consent Judgment

This proceeding as constituted does not involve any unusual or novel issues of fact or law which might make litigation a more desirable alternative than entry of the proposed consent judgment. The proposed judgment includes all the relief requested in the complaint and in addition imposes affirmative obligations on defendants designed to ensure compliance therewith.

VII

Determinative Documents

No materials and documents of the type described in Section (b) of the Antitrust Procedures and Penalties Act (15 U.S.C. §16(b)) were considered in formulating this proposed Judgment.

Respectfully submitted,

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