

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Tubesales: * * * (Esco Corporation), U.S. District Court, D. Oregon, 1965 Trade Cases ¶71,427, (Apr. 22, 1965)

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United States v. Tubesales: * * * (Esco Corporation).

1965 Trade Cases ¶71,427. U.S. District Court, D. Oregon. Civil Action No. 62-512. Entered, April 22, 1965. Case No. 1725 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Stainless Steel Pipe and Tubing—Consent Judgment.—A wholesaler of stainless steel pipe and tubing was prohibited by a consent judgment from fixing prices, adhering to established pricing policies, fixing charges for cutting stainless steel pipe and tubing, submitting collusive bids, and exchanging price information.

For the plaintiff: William H. Orrick, Jr., Gordon B. Spivack, William D. Kilgore, Jr., Lyle L. Jones, Marquis L. Smith, J. Frederick Malakoff, Attorneys, Department of Justice, and Sidney I. Lezak, United States Attorney.

For the defendants: Black & Apicella by Guy J. Rappleyea, McBride, Baker, Wienke & Schlosser, by L. M. McBride.

Final Judgment as to Esco Corporation

SOLOMON, Judge: Plaintiff, United States of America, having filed its complaint herein on December 19, 1962, and the defendant Esco Corporation, by its attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence or an admission by defendant Esco Corporation with respect to any such issue, and the Court having considered the matter and being duly advised.

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein and upon such consent, it is hereby

Ordered, adjudged and decreed as follows:

I

[*Sherman Act*]

This Court has jurisdiction of the subject matter hereof and of the parties consenting hereto. The complaint states a claim against the defendant Esco Corporation under Section 1 of the Act of Congress of July 2, 1890, entitled, "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended

II

[*Definitions*]

As used in this Final Judgment:

- (A) "Person" means any individual, partnership, corporation, association or other business or legal entity;
- (B) "Stainless steel pipe and tubing" means pipe and tubing manufactured from stainless steel.

III

[*Applicability*]

The provisions of this Final Judgment applicable to the defendant Esco Corporation shall apply to it and to each of its successors, assignees, officers, directors, agents, employees and subsidiaries, and to those persons in active concert or participation with such defendant who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[*Practices Prohibited*]

Defendant Esco Corporation is enjoined and restrained from entering into, adhering to, maintaining or claiming any rights under any contract, agreement, understanding or conspiracy with any other person to:

- (A) Fix, establish, maintain or stabilize the prices, discounts, freight rates or other terms or conditions for sale of stainless steel pipe and tubing to any third person;
- (B) Adhere to any prices or pricing policies for the sale of stainless steel pipe and tubing to any third person;
- (C) Fix, establish, maintain or stabilize charges to any third person for cutting stainless steel pipe and tubing into specified lengths;
- (D) Submit collusive or rigged bids for the sale of stainless steel pipe or tubing to any third person.

V

[*Exchange of Information*]

Defendant Esco Corporation is enjoined and restrained from communicating to any other seller of stainless steel pipe and tubing the prices, terms or conditions of sale at which said defendant proposes or intends to bid or quote in response to an invitation from any third person to bid or quote upon stainless steel pipe or tubing, but the mere distribution of price books or price lists by independent action in the course of general circulation to the trade of said defendant to any such seller, without more, shall not constitute a violation of this Section V.

VI

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant Esco Corporation made to its principal office, be permitted, subject to any legally recognized privilege:

- (A) Access, during the office hours of said defendant, who may have counsel present, to those books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant regarding any subject matter contained in this Final Judgment; and
- (B) Subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of the defendant, who may have counsel present, regarding any such matters.

Upon such written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, said defendant shall submit such reports in writing with respect to the matters contained in this Final judgment as may from time to time be necessary to the enforcement of this Final judgment. No information obtained by the means provided in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VII

[*Retention of Jurisdiction*]

Jurisdiction is retained for the purpose of enabling either of the parties to this Final Judgment to apply to the Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions thereof, and for the enforcement of compliance therewith and the punishment of violations thereof.