

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Container Corp. of America, et al., U.S. District Court, M.D. North Carolina, 1970 Trade Cases ¶73,091, (Feb. 6, 1970)

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United States v. Container Corp. of America, et al.

1970 Trade Cases ¶73,091. U.S. District Court, M.D. North Carolina. Civil Action No. C 180 G63. Filed February 6, 1970. Case No. 1759 in the Antitrust Division of the Department of Justice.

Sherman Act

Exchange of Information—Specific Sales to Identified Customers—Judgment.—Cardboard box manufacturers were prohibited by a litigated judgment from exchanging information about prices or conditions of sale. Specifically, the firms may not exchange information as to specific sales to identified customers (most recent price charged or quoted) for the purpose or with the effect of stabilizing prices, minimizing price reductions, restraining competition in price, or inviting compatible or harmonious pricing practices.

For the plaintiff: William L. Osteen, U. S. Atty., Greensboro, N. C, and Lewis Bernstein, Atty., Dept. of Justice, Washington, D. C.

For the defendants: Ralph M. Stockton, Jr., of Hudson, Ferrell, Petree, Stockton, Stockton and Robinson, Winston-Salem, N. C., for Container Corp. of America; Charles F. Blanchard, of Yarborough, Blanchard & Tucker, Raleigh, N. C, for Miller Container Corp. and Albemarle Paper Mfg. Co.; W. P. Sandridge, Jr. and W. F. Womble, of Womble, Carlyle, Sandridge & Rice, Winston-Salem, N. C, for Carolina Container Co.; W. C. Harris, Jr., of Holding, Harris, Poe & Cheshire, Raleigh, N. C, for Continental Can Co., Inc.; Charles T. Hagan, Jr., Greensboro, N. C, for Crown Zellerbach Corp.; John W. Hardy, of Douglas, Ravenel, Josey & Hardy, Greensboro, N. C, for Dixie Container Corp. of N. C; McNeill Smith, of Smith, Moore, Smith, Schell & Hunter, Greensboro, N. C, for Inland Container Corp.; Arthur O. Cooke, of Cooke & Cooke, Greensboro, N. C, for International Paper Co.; Richard L. Wharton, of Wharton, Ivey & Wharton, Greensboro, N. C, for The Mead Corp.; Welch Jordan and William D. Caffrey, of Jordan, Wright, Henson & Nichols, Greensboro, N. C, for Owens-Illinois Glass Co.; Winfield Blackwell, of Blackwell, Blackwell, Canady & Eller, Winston-Salem, N. C, for St. Joe Paper Co.; Norman Block and A. L. Meyland, of Block, Meyland & Lloyd, Greensboro, N. C, for St. Regis Paper Co.; D. Newton Farnell, Jr., Greensboro, N. C, for Tri-State Container Corp.; Thornton Brooks, of McLendon, Brim, Holderness & Brooks, Greensboro, N. C, for Union Bag-Camp Pulp & Paper Co.; Armistead W. Sapp, Jr., Greensboro, N. C, for West Virginia Pulp & Paper Co.; Fred B. Helms, of Helms, Mulliss, McMillan & Johnston, Charlotte, N. C, for Weyerhaeuser Co.; John W. Hardy, of Douglas, Ravenel, Josey & Hardy, Greensboro, N. C, for Dixie Container Corp.

Final Judgment

STANLEY, D. J.: This cause was regularly brought on for trial on January 26, 1966, and this Court having entered its opinion, findings and conclusions, and Final Judgment on August 31, 1967 dismissing the complaint, an appeal having been taken to the Supreme Court of the United States and the Supreme Court having entered its opinion on January 14, 1969 and issued its mandate on that date reversing and remanding the cause for further proceedings in conformity with its opinion;

Now, Therefore, it is hereby;

Ordered, Adjudged and Decreed as follows:

I

The conduct of the defendants in furnishing to one another, upon request, information as to the most recent price charged or quoted to specific customers on specific orders in the circumstances in this case constituted a

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combination in restraint of trade in violation of Section 1 of the Act of Congress of July 2, 1890, (15 U. S. C., § 1) entitled "An act to protect trade and commerce against unlawful restraints and monopolies" commonly known as the Sherman Act, as amended.

II

As used in this Final Judgment:

(A) "Corrugated containers" shall mean any and all kinds of shipping containers made of corrugated container board;

(B) "Person" shall mean any individual, partnership, corporation, association or other legal or business entity;

(C) "Southeastern United States" shall mean that area of the United States consisting of the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee, and Kentucky.

III

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant and to each of its officers, directors, agents and employees, subsidiaries, successors and assigns and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise; *provided, however*, that this Final Judgment shall not apply to transactions or communications solely between a defendant and its officers, directors, employees, parent company and subsidiaries, companies under common ownership or control, or between or among any of them, or to transactions which occur outside of the United States and which do not affect the commerce of the United States.

IV

[*Exchange of Price Information*]

All of the defendants except Albermarle Paper Company are jointly and severally enjoined and restrained from:

(A) For sales of corrugated containers shipped from the Southeastern United States, and for a period of ten (10) years from the date of entry of this Final Judgment, furnishing to, or requesting from, any other manufacturer or seller of corrugated containers the most recent price charged or quoted, or the price to be charged or quoted to an identified customer or identified potential customer with respect to a specific order for particular corrugated containers, whether communicated in the form of a specific price or information from which such specific price may be computed;

(B) Furnishing to, or requesting from any other manufacturer or seller of corrugated containers the most recent price charged or quoted or the price to be charged to an identified customer or identified potential purchaser with respect to a specific order for particular corrugated containers, whether communicated in the form of a specific price or information from which such specific price may be computed, for the purpose or with the effect of stabilizing prices, minimizing price reductions or otherwise restraining competition in price of corrugated containers;

(C) Discussing with any manufacturer or competing seller of corrugated containers the fact that the prices most recently charged or quoted to an identified customer will be or have been changed, or the reasons therefor, for the purpose or with the effect of inviting compatible or harmonious pricing practices or otherwise stabilizing prices, or minimizing or restraining competition in price;

(D) Distributing to any manufacturer of corrugated containers any pricing manual, price lists, or similar pricing material of any kind which has been used or is to be used in computing prices charged or to be charged for corrugated containers unless such has been made generally available to customers of the defendant to which such pricing material is applicable.

V

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[*Bona Fide Transactions*]

In connection with proposed or actual bona fide purchases from or sales to a manufacturer or seller of corrugated containers, nothing contained in this Final Judgment shall apply to a defendant's negotiations, arrangements or communications (a) with that manufacturer or seller or with any agent, broker, distributor or representative of such manufacturer or seller or (b) with any agent, broker, distributor, or representative of such defendant.

VI

[*Compliance & Inspection*]

For the purpose of determining or securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant, made to its principal office shall be permitted, subject to any legally recognized claim of privilege, (a) reasonable access during the office hours of said defendant to those parts of the books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession, custody or control of said defendant which relate to any matters 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 said defendant, who may have counsel present, regarding 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 any of the matters contained in this Final Judgment as from time to time may be requested.

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 plaintiff, 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

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling any 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 or termination of any of the provisions thereof, and for the enforcement of compliance therewith and the punishment of violations thereof.

VIII

[*Costs*]

The defendants shall pay the appropriate taxable costs herein.