

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Anaconda American Brass Company; Phelps Dodge Copper Products Corporation; Chase Brass & Copper Co. Incorporated; Revere Copper and Brass Incorporated; Cerro Corporation; National Distillers and Chemical Corporation; Scovill Manufacturing Company; Calumet & Hecla, Inc.; Mueller Brass Co.; Triangle Conduit & Cable Co., Inc.; and Progress Manufacturing Company, Inc., U.S. District Court, D. Connecticut, 1965 Trade Cases ¶71,623, (Jan. 4, 1966)

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United States v. Anaconda American Brass Company; Phelps Dodge Copper Products Corporation; Chase Brass & Copper Co. Incorporated; Revere Copper and Brass Incorporated; Cerro Corporation; National Distillers and Chemical Corporation; Scovill Manufacturing Company; Calumet & Hecla, Inc.; Mueller Brass Co.; Triangle Conduit & Cable Co., Inc.; and Progress Manufacturing Company, Inc.

1965 Trade Cases ¶71,623. U.S. District Court, D. Connecticut. Civil Action No.9543. Entered January 4, 1966. Case No, 1722 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Bid Rigging—Brass Mill Products—Consent Decree.—Eleven manufacturers of brass mill products were prohibited by a consent decree from fixing prices, rigging bids and exchanging price information and required to submit, in connection with sealed bids to governmental buyers, written certification that such bids were not collusive.

For the plaintiff: D. F. Turner, Assistant Attorney General; W. D. Kilgore, Jr.; and Gordon B. Spivack, Attorneys, Department of Justice.

For the defendants: Chadbourne, Parke, Whiteside & Wolff by Melvin D. Goodman; Shipmen & Goodwin by Benjamin Harrison, Hartford, Connecticut, for Anaconda American Brass Company; Donald F. Keefe, New Haven, Connecticut for Phelps Dodge Copper Products Corporation; Sullivan & Cromwell by William Piel, Jr., New York, N. Y.; Shepherd, Murtha & Merritt by J. Read Murphy, Hartford, Connecticut, for Chase Brass & Copper Co., Incorporated; Cahill, Gordon, Reindel & Ohl by Jerome Doyle, New York, N. Y.; Alcorn, Bakewell & Smith by H. Meade Alcorn, Jr., Hartford, Connecticut, for Revere Copper and Brass Incorporated; Alexander & Green by J. Kenneth Campbell, New York, N. Y.; Robinson, Robinson & Cole by Charles J. Cole, Hartford, Connecticut for Cerro Corporation; Donovan, Leisure, Newton & Irvine by Walter R. Mansfield, New York, N. Y.; Day, Berry & Howard by Ralph C Dixon, Hartford, Connecticut for National Distillers and Chemical Corporation; Davis, Polk, Wardwell, Sunderland & Kiendl by Porter R. Chandler, New York, N. Y.; Wiggin & Dana by Frank E. Callahan, New Haven, Connecticut for Scovill Manufacturing Company; Raymond, Mayer, Jenner & Block by Edward H. Nathon, Chicago, Illinois; William Fox Geenty, New Haven Connecticut, for Calumet & Hecla, Inc.; Walsh, O'Sullivan, Stommel & Sharp by Kenneth J. Stommel, Port Huron, Michigan for Mueller Brass Co.; Cooney and Scully by Joseph P. Cooney, Hartford, Connecticut for Triangle Conduit & Cable Co., Inc.; Stein, Abrams & Rosen by Warren J. Kaps, New York, N. Y.; Bailey, Wechsler and Shea by Alfred S. Wechsler, Hartford, Connecticut for Progress Manufacturing Company, Inc. and Reading Tube Corporation.

Final Judgment

BLUMENFELD, J.: Plaintiff, United States of America, having filed its complaint herein on December 4, 1962, and the consenting defendants having appeared by their attorneys, and said defendants and plaintiff by their attorneys having consented to the entry of this Final Judgment pursuant to a stipulation entered into November

30, 1965 without trial or adjudication of any issue of fact or law herein, and without this judgment constituting any evidence or admission by any party in respect to any issue of fact or law herein;

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

Ordered, adjudged and decreed as follows:

I

[*Sherman Act*]

This Court has jurisdiction of the subject matter hereof and of each party consenting hereto. The complaint states a claim for relief against the defendants 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 judgment:

(A) "Person" shall mean an individual, partnership, firm, association, corporation or other legal or business entity.

(B) "Brass mill products" shall mean copper and copper base alloy (the latter commonly referred to as "brass") sheet, strip, tube and pipe and copper base alloy rod and wire. "Brass mill tube and pipe" shall mean tube and pipe manufactured from copper or copper base alloys (the latter commonly referred to as "brass") for use in the construction, automotive, utility, refrigeration, air conditioning, appliance and other industries.

(C) "United States" shall mean the United States of America, its territories and possessions.

III

[*Added Party*]

It appearing to this Court, pursuant to [Section 5 of the Sherman Act](#), that the needs of justice require that the Reading Tube Corporation, incorporated under the laws of the State of Delaware on December 11, 1962, and which corporation has succeeded, in regard to brass mill tube and pipe, to part of the assets and business formerly conducted by Progress Manufacturing Company, Inc., be brought before this Court, said Reading Tube Corporation hereby appears as a party defendant waiving the necessity of being summoned and answering the complaint herein, and agreeing to be bound by the applicable provisions of this Final Judgment. It is further provided that the complaint as to the defendant Progress Manufacturing Company, Inc. be and the same is hereby dismissed without prejudice.

IV

[*Applicability*]

The provisions of this judgment applicable to any defendant shall apply to each of its subsidiaries, successors, assigns, officers, directors, agents and employees, and to all other persons in active concert or participation with such defendant who shall have received actual notice of this judgment by personal service or otherwise, but shall not apply to transactions solely between or among a defendant and its officers, directors, agents, employees, parent company and subsidiaries, or any of them, when acting in such capacity. This Final Judgment shall not apply to conduct outside the United States unless such conduct substantially affects the foreign or domestic commerce of the United States but shall apply to sales by any defendant to or for the stated use of the plaintiff or any instrumentality or agency thereof.

V

[*Price Fixing, Bid Rigging*]

Each of the defendants is enjoined and restrained from directly or indirectly entering into, adhering to or claiming any right under any contract, agreement, arrangement, understanding, plan or program with any other manufacturer or seller of brass mill products to:

- (A) Fix, maintain, stabilize, adopt or adhere to prices or other terms and conditions, including commissions, for the sale of any brass mill products to any third person;
- (B) Submit collusive or rigged bids or quotations for the sale of any brass mill products to any third person;
- (C) Classify any third person to determine the prices, terms or conditions of sale of brass mill products to be offered to that person; or
- (D) Exchange information with respect to any such classification of any third person, except that this subsection (D) shall not prohibit the furnishing or receipt of information concerning the credit standing of any such person.

VI

[*Exchange of Price Information*]

Each of the defendants is enjoined and restrained from communicating to any other manufacturer or seller of brass mill products any information relating to prices, terms or conditions of sale applicable to brass mill products, except that such information may be communicated with or after the release of such information publicly or to the trade generally, or except as necessary to negotiations for a bona fide purchase or sale transaction between them for brass mill products.

VII

[*Non-collusive Bids*]

Each of the defendants is ordered and directed, for a period of five years from the date of entry of this Final Judgment:

- (A) In connection with any sealed bid submitted by it to any state or local government, authority, agency or instrumentality for the sale of brass mill tube and pipe, to submit with such bid a written certification relating to such sealed bid in substantially the form set forth in the Appendix hereto or containing the substance thereof.
- (B) To certify in writing, through one of its corporate or divisional officers, at the time of every succeeding change authorized by such officer in published prices, terms, or conditions of sale of brass mill tube and pipe, that he has made reasonable inquiry and to his best knowledge and belief said change was independently arrived at by said defendant and was not the result of any agreement or understanding with any competitor; and further that each defendant retain in its files the aforesaid certifications which shall be made available to plaintiff for inspection upon reasonable written demand.

VIII

[*Exemptions*]

Nothing contained in Sections V and VI of this Final Judgment shall be construed to prevent any of the defendants from availing itself of the benefits or exemptions of the Webb-Pomerene Act, the Miller-Tydings Act and the McGuire Act.

IX

[*Compliance*]

Each of the consenting defendants is ordered and directed, within 60 days from the date of entry of this Final Judgment, to furnish a copy of this Final Judgment to each of its officers and area, regional and branch managers and assistant managers of sales having duties or responsibilities relating to sales of brass mill tube

and pipe in the United States, and to retain in its files for a period of five (5) years from the date of this Final Judgment a written statement signed within said sixty(60) days by each such employee setting forth the date he received and read a copy of this Final Judgment, his title, his place of employment and the name of his immediate supervisor.

X

[*Inspection*]

For the purpose of determining or securing compliance with this Final Judgment, 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 any defendant, made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Reasonable access, during office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, relating to any matters contained in this Final Judgment; and

(B) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding any such matters.

Upon such written request such defendant shall submit such reports in writing with respect to any of the matters contained in this Final Judgment as may from time to time be necessary and requested for the enforcement of this judgment.

No information obtained by the means provided in this Section X shall be divulged by any representative of the Department of Justice to anyone 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 judgment or as otherwise required by law.

XI

[*Jurisdiction Retained*]

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and 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 hereof, for the enforcement of compliance herewith and for the punishment of violations hereof.

Appendix

The undersigned hereby certifies that he has made reasonable inquiry and to his best knowledge and belief the annexed bid has not been prepared in collusion with any other manufacturer or seller of brass mill tube and pipe and that the prices, terms or conditions thereof have not been communicated by or on behalf of the bidder to any such person and will not be communicated to any such person prior to the official opening of said bid.