

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. National Alfalfa Dehydrating: and Milling Company and Grain Elevator Warehouse Company., U.S. District Court, D. Colorado, 1963 Trade Cases ¶70,665, (Mar. 15, 1963)

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United States v. National Alfalfa Dehydrating: and Milling Company and Grain Elevator Warehouse Company. 1963 Trade Cases ¶70,665. U.S. District Court, D. Colorado. Civil Action No. 6111. Entered March 15, 1963. Case No. 1398. in the Antitrust Division of the Department of Justice.

Clayton Act

Acquiring Competitors—Divestiture of Stock or Assets—Dehydrated Alfalfa—Consent Judgment.—

A manufacturer of dehydrated alfalfa was required to divest itself of seven alfalfa dehydrating plants under the terms of a consent judgment. Also, for a period of five years, the manufacturer would be prohibited from acquiring all or any part of producing, marketing or storing facilities.

Acquiring Competitors—General Injunctive Relief—Leasing of Gas Storage Facilities —Consent

Judgment.—A grain elevator company was required under the terms of a consent judgment to lease ten per cent of its gas storage facilities to any eligible applicants each year for a period of five years.

For the plaintiff: Lee Loevinger, Assistant Attorney General, Wm. D. Kilgore, Jr., Earl A. Jinkinson, and Raymond P. Hernacki, Attorneys, Department of Justice.

For the defendants: Dawson, Nagel, Sherman & Howard, by Arthur K. Underwood, Jr., Hugh A. Burns, and James E. Hautzinger, for National Alfalfa Dehydrating and Milling Company and Grain Elevator Warehouse Company; and Shapiro, Rosenfeld, Stalberg and Cook, by Harry Shapiro, for National Alfalfa Dehydrating and Milling Company.

Final Judgment

ARRAJ, Judge [*In full text*] : Plaintiff, United States of America, having filed its complaint herein on June 27, 1958, and having joined Grain Elevator Warehouse Company as a party defendant by an amended complaint filed on March 22, 1961 and defendants having appeared by their attorneys, and filed their answers to such complaint and amended complaint, denying the substantive allegations thereof, and plaintiff and defendants having severally consented to this Final Judgment without trial or adjudication of any issue of fact or law herein, and without said judgment constituting evidence or any admission by plaintiff or defendants in respect to any issue of fact or law herein;

Now, therefore, before any testimony has been taken and without trial or adjudication of or any admission with respect to any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

[Clayton Act]

This Court has jurisdiction of the subject matter hereof and of the parties hereto pursuant to Section 15 of the Act of Congress of October 15, 1914, as amended, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act, and the complaint states claims for relief under Section 7 of said Act.

II

[Definitions]

As used in this Final Judgment:

- (a) "National Alfalfa" shall mean defendant National Alfalfa Dehydrating and Milling Company, a corporation organized and existing under the laws of the State of Delaware, with its principal office at Kansas City, Missouri;
- (b) "Grain Elevator" shall mean defendant Grain Elevator Warehouse Company, a corporation organized and existing under the laws of the State of Delaware, with its principal office at Camden, New Jersey;
- (c) "Person" shall mean any individual, firm, association, partnership, corporation, company or other legal or business entity;
- (d) "Eligible person" shall mean any person or persons other than (i) any person in which defendants own any stock or financial interest, directly or indirectly, (ii) any one or more officers, directors, agents or employees of defendants, or (iii) any other person or persons acting for or under the control of defendants ;
- (e) "Crop year" shall mean the period from May 1 through the following April 30.

III

[Applicability]

The provisions of this Final Judgment applicable to defendants shall be binding upon defendants, their officers, agents, servants, employees, subsidiaries, successors and assigns, and to those persons in active concert or participation with defendants who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[Acquisitions Prohibited]

For a period of five (5) years from the date of entry of this Final Judgment, defendants are enjoined and restrained from acquiring from any person, directly or indirectly, whether by way of acquisition of assets or capital stock, all or any part of, or interest in, the business in the United States of producing, marketing or storing dehydrated alfalfa conducted by such person; provided, however, that nothing contained in this Final Judgment shall prohibit defendants from

- (a) Obtaining facilities for the storage of dehydrated alfalfa under temporary leases when additional storage is needed due to production or market fluctuations;
- (b) Acquiring supplies or materials in the normal course of business or acquiring assets to replace deteriorated or outmoded equipment;
- (c) Acquiring, directly or indirectly, any or all of the assets or capital stock of any of their respective subsidiaries or of each other, or forming subsidiaries and transferring thereto stock or assets of defendants or of their subsidiaries; or
- (d) Acquiring, directly or indirectly, any or all of the assets or capital stock of any such person where such acquisition shall be consented to by the Department of Justice, or where it shall be shown to the satisfaction of this Court, upon application by defendants and reasonable notice to plaintiff, that the effect of such acquisition will not be substantially to lessen competition or to tend to create a monopoly in any line of commerce in any section of the United States.

V

[Divestiture Required]

Within a reasonable time after the date of entry of this Final Judgment, defendant National Alfalfa shall sell to an eligible person as a reasonable price all of the assets itemized in Schedule (1) attached hereto and hereby made a part hereof. Such sale shall be made in good faith and shall be absolute, unqualified and unconditional. If

said assets itemized in Schedule (1) are not sold for cash, nothing herein contained shall be deemed to prohibit defendant National Alfalfa from retaining, accepting and enforcing a bona fide lien, mortgage, deed of trust or other form of security (except equity in the securities of purchaser) on said assets for the purpose of securing to defendant National Alfalfa full payment of the price at which said assets are sold, provided that any such assets repossessed shall be again divested in the same manner as provided above.

Following the entry of this Final Judgment, defendant National Alfalfa shall render annual reports to this Court, with copies to plaintiff, outlining in reasonable detail the efforts made by defendant National Alfalfa to dispose of said assets. If the plaintiff herein is, at any time, dissatisfied with the progress or efforts being made in the sale of said assets, it may file a petition with this Court, on reasonable notice to defendant National Alfalfa, for such further orders and directions as may be necessary to effect the sale of said assets by defendant National Alfalfa.

VI

[Leasing of Gas Storage Facilities Required]

Defendant Grain Elevator is hereby ordered, directed and required to lease to any applicants who are eligible persons, at a reasonable rental, ten per cent (10%) of its gas storage facilities at such locations in the United States as defendant Grain Elevator may determine. Defendant Grain Elevator shall give reasonable notice to the dehydrated alfalfa industry at least 90 days prior to May 1 of each year of the location and capacity of such gas storage facilities as will be available for the next crop year. Unless defendant Grain Elevator consents otherwise, such gas storage facilities shall be offered for rental in units of 1100 tons in capacity or multiples thereof. In the event that gas storage facilities so offered are not rented by an eligible person by April 30 of the crop year within which such notice has been given, defendant Grain Elevator will be free to rent or use such facilities during the next crop year as defendant Grain Elevator may determine. In the further event that ten per cent (10%) of defendant Grain Elevator's gas storage facilities are not rented by any eligible person or persons for any portion of a period consisting of three (3) successive years, this Section VI will be void and of no effect. Further, this Section VI shall in any event terminate and be of no further effect five (5) years after the date of entry of this Final Judgment.

VII

[Inspection]

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

- (a) Access, during the office hours of defendants, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession of or under control of said defendants related to any of the matters contained in this Final Judgment; and
- (b) Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview the officers and employees of said defendants, who may have counsel present, regarding any such matters.

Upon such written request the defendants 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 VII 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.

VIII

[*Jurisdiction Retained*]

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

Schedule (1)

Location	Description of Property
May Valley Colorado	Equipment, Buildings and Plant Site.
Ordway, Colorado	Equipment, Buildings and Plant Site.
Wiley, Colorado	Equipment, Buildings and Plant Site.
Longton, Kansas	One Drum, Equipment, Buildings and Plant Site.
Valley, Nebraska	One Drum, Equipment, Buildings and Plant Site.
Bradner, Ohio	One Drum, Equipment, Buildings and Plant Site.
Phillippy, Tennessee	One Drum, Equipment, Buildings and Plant Site.