

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The C. Reiss Coal Co., Great Lakes Coal & Dock Co., and Pickands Mather & Co., U.S. District Court, E.D. Wisconsin, 1976-2 Trade Cases ¶61,082, (Jul. 9, 1976)

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United States v. The C. Reiss Coal Co., Great Lakes Coal & Dock Co., and Pickands Mather & Co.

1976-2 Trade Cases ¶61,082. U.S. District Court, E.D. Wisconsin. Civil Action No. 72-C-210. Entered July 9, 1976. (Competitive impact statement and other matters filed with settlement: 41 *Federal Register* 18322). Case No. 2230, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing—Allocation of Markets—“Dock Coal” Companies—Consent Decree.— Three “dock coal” companies were prohibited by a consent decree from: (a) fixing, raising or maintaining prices; (b) allocating customers, territories or markets; (c) bid rigging and (d) exchanging price information with a competitor prior to the communication of such information to the public or trade generally. The coal companies were also barred from suggesting prices to competitors or from revealing to them the identity of any of their customers.

For plaintiff: Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, Charles F. B. McAleer, Matthew E. Jaffe, John A. Weedon, and Frank B. Moore, Attys., Dept. of Justice.

For defendants: Robert V. Abendroth, for The C. Reiss Coal Co.; David E. Beckwith, for Great Lakes Coal & Dock Co.; and Walter A. Bates, for Pickands Mather & Co.

Final Judgment

REYNOLDS, D. J.: Plaintiff, United States of America, having filed its complaint herein on April 11, 1972; defendants having appeared by their respective counsel; and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law and before taking any testimony, and without admission by any party with respect to any such issue;

Now, Therefore, without trial or adjudication of any issue of fact or law, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I.

[*Jurisdiction*]

This court has jurisdiction of the subject matter hereof and the parties hereto. The complaint states a claim upon which relief may be granted against the defendants under Section 1 of the Act of Congress of July 2, 1890, as amended, 15 U. S. C. § 1, commonly known as the Sherman Act.

II.

[*Definitions*]

As used in this Final Judgment:

(a) “Person” shall mean any individual, partnership, firm, association, corporation or other business or legal entity;

(b) “Dock coal” means either (1) coal unloaded on the dock coal company's own docks for storage and later shipment to the customer by rail or truck, or (2) coal unloaded at the customer's own docks.

III.

[*Applicability*]

The provisions of this Final Judgment applicable to defendants shall also apply to each of their officers, directors, agents, employees, subsidiaries, successors and assigns, and to all persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

[*Price Fixing; Allocation; Bids; Information*]

Each defendant is enjoined and restrained, individually and collectively, from entering into, adhering to, participating in, maintaining, furthering, enforcing or claiming, directly or indirectly, any rights under any contract, agreement, understanding, plan or program, with any person, to:

- (a) Fix, raise, maintain or stabilize prices, discounts or other terms or conditions for the sale of dock coal to retail, commercial, industrial, municipal, county, state and federal customers;
- (b) Allocate customers, territories or markets for the sale of dock coal;
- (c) Rig bids on sales of dock coal made to retail, commercial, industrial, municipal, county, state, and federal customers;
- (d) Communicate to or exchange with any other person selling dock coal any information concerning prices at or upon which dock coal is to be sold to any third person prior to the communication of such information to the public or trade generally.

V.

[*Suggested Prices*]

Each defendant is enjoined and restrained, individually and collectively, from directly or indirectly:

- (a) urging, attempting to influence or suggesting to any other dock coal company the prices or other terms or conditions of sale for dock coal to any third person, and
- (b) Advising or informing any other defendant of the identity of any of its customers for dock coal.

VI.

[*Sales Negotiations*]

Nothing herein shall be construed to enjoin or restrain any defendant from:

- (a) conducting *bona fide* arm's length purchase or sale negotiations with any supplier or customer of dock coal nor from communicating or exchanging information concerning prices in connection with such negotiations, or
- (b) acting as a *bona fide* agent or broker for any producer or processor of dock coal nor from communicating or exchanging information concerning prices, customers, markets or territories as a necessary part of such relationship.

VII.

[*Price Review*]

Within sixty (60) days of the entry of this Final Judgment, each defendant is ordered and directed, individually and independently, with respect to dock coal:

- (a) To review, determine and establish its prices and other terms and conditions of sale of such coal on the basis of its independent judgment; provided, however, that compliance with the provisions of this Paragraph VII(a) and Paragraph VII(b) shall not be required if within such sixty (60) day period an affidavit signed by the officer or officers responsible for the determination of such prices, terms and conditions is filed with this Court (with a

copy to the Assistant Attorney General in charge of the Antitrust Division) stating that such defendant, prior to the effective date of this Final judgment and subsequent to April 11, 1972, reviewed, determined and announced the prices, discounts, or terms and conditions of sale of such coal in accordance with the requirements of this paragraph.

(b) To withdraw its then current price lists for such coal, if any, and adopt and publish price lists, if any are used, arrived at pursuant to subparagraph (a) above.

VIII.

[Bid Certification]

Each defendant is ordered and directed, for a period of five (5) years from and after the date of entry of this Final Judgment, to furnish simultaneously with each bid or quotation required to be sealed which is submitted by it for the sale of dock coal to municipal, county, state and federal institutions, a certificate in substantially the form set forth in the Appendix hereto, by an official of such defendant having knowledge as to, and responsibility for, the determination of the price or prices bid or quoted, that said bid or quotation was not the result, directly or indirectly, of any agreement, understanding, plan or program between such defendant and any other person selling dock coal; provided, however, that such an affidavit would not be untrue because the defendant has negotiated for, entered into, or carried out a *bona fide* purchase or sale transaction with any other person, with respect to said bid or quotation, whereby the defendant would purchase dock coal from, or supply dock coal to, such person, or whereby the defendant would submit a joint bid or quotation with such person.

IX.

[Successors]

Each defendant shall require as a condition of the sale or other disposition of all, or substantially all, of the assets used by it in any dock coal business, that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party shall file with the Court, and serve upon the plaintiff, its consent to be bound by this Final Judgment.

X.

[Reports]

For a period of ten (10) years from the date of entry of this Final Judgment, each defendant is ordered and directed to file with the plaintiff at its Cleveland office (unless otherwise directed) on each anniversary date of such entry, a report setting forth the steps it has taken during the prior year to advise its appropriate officers, directors and employees of its and their obligations under this Final Judgment.

XI.

[Inspections]

For the purpose of securing or determining 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 each or any of the defendants, made to their respective principal offices, be permitted, subject to any legally recognized privilege:

(a) Access, during regular office hours of each or any of such defendants, to all books, records, ledgers, accounts, correspondence, memoranda and other records and documents in the possession of or under the control of each or any of such defendants, relating to any matters contained in this Final Judgment.

(b) Subject to the reasonable convenience of each or any of the defendants, and without restraint or interference from such defendants, to interview their officers or employees, who may have counsel present, regarding any matters contained in this Final Judgment.

Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made to their respective principal offices, defendants shall submit such additional reports in writing with respect to the matters contained in this Final Judgment as may from time to time be requested.

No information obtained by the means permitted in this Paragraph XI shall be divulged by any representatives 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.

XII.

[*Retention of Jurisdiction*]

Jurisdiction is retained by this Court for the purpose of enabling any party 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 of or the carrying out of this Final Judgment, for the modification of any of its provisions, for the enforcement of compliance therewith and for the punishment for violations thereof.

XIII.

[*Public Interest*]

Entry of the Final Judgment is in the public interest.