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United States v. Kaiser Aluminum & Chemical Corporation.

1965 Trade Cases ¶71,354. U.S. District Court, D. Rhode Island. Civil Action No. 2795. Entered February 23, 1965. Case No. 1609 in the Antitrust Division of the Department of Justice.

Clayton Act

Acquiring Competitors—Divestiture—Consent Judgment.—An integrated aluminum company was required by a consent judgment to sell a wire and cable plant to an eligible purchaser which would keep it in operation. The price at which the plant was to be sold was set at not less than book value, and if no sale was effected within nine months, despite a bona fide effort, the aluminum producer would be relieved of its obligation to sell. The judgment also enjoined the aluminum producer from acquiring any other wire and cable producer for five months.

For the plaintiff: William H. Orrick, Jr., Donald F. Melchior, William D. Kilgore, Jr., Charles D. Mehaffie, Jr., and Lawrence F. Noble, Attorneys, Department of Justice.

For the defendant: William H. Edwards, Gordon Johnson and Paul R. Haerle.

Final Judgment

DAY, Judge: Plaintiff, United States of America, having filed its complaint herein on April 28, 1961, and defendant, Kaiser Aluminum & Chemical Corporation, having appeared and filed its answer to such complaint, denying the substantive allegations thereof; and plaintiff and defendant, by their respective attorneys, having each consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence or an admission by either party hereto 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 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 of this action and of the parties hereto. The complaint states a claim upon which relief may be granted against the defendant under Section 7 of the Act of Congress of October 15, 1914 (15 U. S. C. Section 18), commonly known as the Clayton Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

(A) "Eligible Purchaser" means any person, other than a producer of primary aluminum metal, approved by plaintiff;

(B) "Kaiser" means defendant, Kaiser Aluminum & Chemical Corporation, a corporation organized and existing under the laws of the State of Delaware with its principal office at Oakland, California;

- (C) "Person" means any individual, partnership, firm, corporation, association, trustee or other business or legal entity;
- (D) "Plan" means Kaiser's Bristol, Rhode Island, wire and cable plant (including lands and buildings) previously owned by United States Rubber Company, together with the machinery and equipment, raw materials, operating supplies, work-in-progress, finished electrical wire and cable goods and other inventory items located at the Plant, and field finished goods inventories produced at the Bristol wire and cable plant; and
- (E) "United States" shall mean the United States of America, its territories and possessions.

III

[*Applicability*]

The provisions of this Final Judgment applicable to Kaiser shall also apply to its directors, officers, agents, and employees and to its subsidiaries, successors and assigns, and to all other persons in active concert or participation with Kaiser who have received actual notice of this Final Judgment by personal service or otherwise. This Final Judgment shall not apply or relate to the activities or operations of Kaiser outside of the United States. None of the provisions of this Final Judgment shall apply to any person or persons who acquire any of the assets disposed of pursuant to this Final Judgment.

IV

[*Terms of Divestiture*]

(A) Kaiser is ordered and directed, within nine months from the date of entry of this Final Judgment, to sell the Plant to an Eligible Purchaser which will operate the Plant as an operating business in competition with other firms engaged in the manufacture, production and sale of insulated and covered electrical conductor wire and cable products. The net price to be paid to Kaiser for the Plant shall be no less than the total of:

- (a) The book value of the land, plant and equipment as of the date of sale (said book value being \$4,362,000 as of October 31, 1964);
- (b) The book value of all raw materials, operating supplies, work in progress, finished goods, plant inventories and finished goods inventories except, however, that the book value shall be adjusted to include aluminum and copper content at market value as of date of sale;
- (c) The amount of additional expense incurred by Kaiser for pension and termination pay payments, or provisions there-for, relative to Plant employees resulting from the fact that the pension and termination pay plans for said employees were not funded at the time of acquisition by Kaiser; and
- (d) All incidental expenses relative to the sale of the Plant and the transfer of said assets.

Without: limiting the generalities of the foregoing, Kaiser may at any time make capital additions to the Plant and the cost thereof shall be included in said book value. In addition, the purchaser of said Plant shall agree to continue pension and termination payment plans for the employees of the Plant, other employee benefits, and conditions of employment, upon terms no less favorable than those provided by Kaiser and shall assume all of the obligations of Kaiser relative to said pension and termination payment plans and to conditions of employment applicable to both past and existing employees of the Plant. In the event the full net price is not payable to Kaiser in cash, the terms and conditions of payment shall be such as are acceptable to Kaiser.

(B) If Kaiser is unable to sell the Plant as hereinbefore provided within nine months from the date of entry of this Final Judgment., it shall have the right to apply to the Court, on notice to plaintiff, for a determination that it has made a *bona fide* effort to sell the Plant and has been unable so to do, in which event and on such determination by the Court, Kaiser shall be relieved from further obligation to sell the Plant.

(C) Kaiser shall make known the availability of the Plant for sale by customary and usual means. Kaiser shall furnish to bona fide prospective purchasers all necessary information regarding the Plant and the operations

carried on by Kaiser therein, and shall permit them to make such inspection of the Plant as may be reasonably necessary for the above purpose.

(D) The divestiture ordered and directed by this Final Judgment shall be made in good faith and shall be absolute and unqualified; *provided, however*, that Kaiser may accept and enforce any bona fide lien, mortgage, deed of trust or other form of security on all or any portion of the Plant given for the purpose of securing to Kaiser payment of any unpaid portion of the purchase price there for or performance of the sale transaction, and may also enforce any other of the terms and conditions of the sale transaction as therein provided or as provided by law; *provided, further*, that should the Plant be returned to the control of Kaiser, it shall then dispose of the Plant in accordance with the provisions of this Section IV, with the time period to be computed from the date of return of control.

V

[*Future Acquisitions*]

Kaiser is enjoined and restrained for a period of five years from the effective date of this Final Judgment from acquiring

- (1) Any capital stock of any corporation which is engaged in the manufacture of electrical conductor wire and cable products in the United States; or
- (2) All or any part of the assets (except for the purchase of products, commodities, machinery or equipment in the normal course of business) of a person engaged in the manufacture of electrical conductor wire and cable products within the United States.

This Final Judgment shall not prohibit Kaiser from acquiring in good faith the stock or assets of any person in the exercise of any security or debt or liability enforcement process, whether provided by law or bona fide agreement, so long as Kaiser shall dispose of such stock or assets within a reasonable period of time.

VI

[*Inspection and Compliance*]

For the purpose of determining or 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 written request of the Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Kaiser at its principal office, be permitted:

- (1) Reasonable access, during office hours of Kaiser, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Kaiser relating to any matters contained in this Final Judgment; and
- (2) Subject to the reasonable convenience of Kaiser and without restraint or interference from it, to interview officers or employees of Kaiser, who may have counsel present, regarding any such matters.

For the purpose of securing compliance with this Final Judgment, Kaiser, upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and upon reasonable notice made to its principal office, shall submit such reasonable reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may, from time to time, be necessary for 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 plaintiff except in the course of court proceedings to which the United States of America 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 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, the modification or termination of any of the provisions thereof, for the enforcement of compliance herewith, and for the punishment of violations hereof.