

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Allied Chemical Corp., Koppers Co., Inc., Trimount Bituminous Products Co., James Huggins & Son, Inc., H. H. McGuire & Co., Inc., and Independent Coal Tar Co., U.S. District Court, D. Massachusetts, 1961 Trade Cases ¶69,923, (Nov. 28, 1960)

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United States v. Allied Chemical Corp., Koppers Co., Inc., Trimount Bituminous Products Co., James Huggins & Son, Inc., H. H. McGuire & Co., Inc., and Independent Coal Tar Co.

1961 Trade Cases ¶69,923. U.S. District Court, D. Massachusetts. Civil Action No. 59-784-S. Dated November 28, 1960. Case No. 1480 in the Antitrust Division of the Department of Justice.

Sherman Act

Combinations and Conspiracies—Road Tar Sales—Price Fixing—Bidding Practices— Allocation of Territories—Consent Decree.—Vendors of road tar have been prohibited, by a consent decree, from influencing or suggesting noncompetitive pricing; from entering into agreements or understandings as to price fixing, allocation of territories or customers, refraining from bidding, or submitting noncompetitive bids; from exchanging price information, except in connection with good faith negotiations between vendors; and from exchanging or disclosing information as to bids or bidding intentions. The decree is made prima facie evidence in suits by governmental units filed in Massachusetts, Maine, New Hampshire or Vermont. Also, for a period of five years bids to government units are to be accompanied by sworn statements that prices are independent and in good faith.

For the plaintiff: Robert A. Bicks, Assistant Attorney General, William D. Kilgore, Jr., Baddia J. Rashid, John D. Swartz, John J. Galgay, Bernard Wehrmann, E. H. Stone, and Paul J. McQueen, Attorneys, Department of Justice.

For the defendants: Kevin Hern for Allied Chemical Corp., Thomas E. Dwyer for Trimount Bituminous Products Co. and James Huggins & Son, Inc., Ralph Warren Sullivan for H. H. McGuire & Co., Inc., John B. Reigeluth for Independent Coal Tar Co. and Donald R. Grant, Ropes, Gray, Best, Coolidge & Rugg, for Koppers Co., Inc., all of Boston, Mass.

Final Judgment

SWEENEY, Chief Judge [*In full text*] : The plaintiff, United States of America, having filed its complaint herein on October 13, 1959, and defendants signatory hereto having admitted the allegations contained in the Government's complaint herein solely for the purpose and to the extent necessary to give to the following adjudication the *prima facie* effect stated in Section I below in the suits specified below, and for no other purpose, Now, therefore,, before any testimony has been taken herein without trial and upon the consent of all the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

That on the basis of said limited admission the defendants signatory hereto have engaged in an unlawful combination and conspiracy in violation of [Section 1 of the Sherman Act](#) as charged in the said complaint, this adjudication being for the sole purpose of establishing the *prima facie* effect of this Final Judgment, in the suits specified below, and for no other purpose;

Each defendant is enjoined and restrained from denying that this Final Judgment has such *prima facie* effect in any such suit; provided, however, that this section shall not be deemed to prohibit any such defendant from rebutting such *prima facie* evidence or from asserting any defense with respect to damages or other defenses available to it. The specified suits referred to above are any suits instituted in this or any other court by the Commonwealth of Massachusetts, the States of Maine, New Hampshire, or Vermont, or any city or town within these states or the Commonwealth of Massachusetts against any of the defendants signatory hereto prior to September 14, 1960, and which allege violation of the Federal antitrust law and claim damages growing out of the purchases of road tar from any such defendant.

II

The Court has jurisdiction of the subject matter herein and all parties hereto. The complaint states a claim upon which relief may be granted against the defendants signatory hereto, and each of them, 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.

III

As used in this Final Judgment:

- (A) "Person" means any individual, partnership, firm, corporation, association, or other business or legal entity;
- (B) "Road tar" means a road paving material consisting of "heavy tar" and "light fluxing tar".
- (C) "Governmental body" means the United States, any State, County or Municipality and any Agency thereof.

IV

The provisions of this Final Judgment applicable to any defendant signatory hereto shall apply to such defendant and to its officers, agents, servants, employees, subsidiaries, successors and assigns, and to all persons in active concert or participation with any such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

V

The defendants signatory hereto are jointly and severally enjoined and restrained from directly or indirectly:

- (A) Urging, influencing or suggesting to, or attempting to urge, influence or suggest to, any other person to quote or charge noncompetitive or specified prices or terms or conditions of sale for road tar to any third person;
- (B) Entering into, adhering to, maintaining or claiming any right under any contract, combination, agreement, understanding, plan or program among themselves or with any other vendor of road tar or any association or central agency of or for such vendors, to:
 - (1) fix, determine, establish, or maintain prices, pricing methods, discounts, or other terms of sale of road tar to any third person;
 - (2) allocate territories or customers for the sale of road tar;
 - (3) refrain from submitting bids for the supply of road tar to any governmental body or to any other person;
 - (4) submit a bid for the supply of road tar to any governmental body or other person which bid is not intended to attract the award of a contract;
 - (5) refrain from competing in the sale of road tar.
- (C) Communicating, circulating, exchanging, among themselves or with other vendors of road tar, in any manner, any price information, price list or purported price list containing or purporting to contain any prices or terms or conditions for the sale of road tar; provided that nothing in this subparagraph (C) shall be deemed to invalidate, prohibit or restrain bona fide negotiations between vendors of road tar.

(D) i Being a member of, contributing anything of value to, or participating in any of the activities of any trade association or central agency for road tar vendors with knowledge that the activities thereof are in violation of any of the provisions of this Final Judgment;

(E), Disclosing to or exchanging, with any other vendor of road tar:

- (1) The intention to submit or not to submit a bid to a governmental body;
- (2) the fact that a bid has or has not been submitted, or
- (3) the content of any bid.

VI

Each of the defendants signatory hereto is ordered and directed, not later than sixty (60) days following the date of the entry of this Final Judgment, individually and independently (1) to review its then prevailing prices for road tar, (2) to determine prices of road tar based on its own manufacturing and overhead costs, the margin of profit individually desired and other lawful considerations, and (3) to establish the prices determined under (2) above, which prices shall become effective not later than ninety (90) days following the date of the entry of this Final Judgment.

VII

Each of the defendants signatory hereto is ordered and directed for a period of five years after the date of entry of this Final Judgment to submit a sworn statement in the form set forth in the Appendix A hereto, with each bid for road tar submitted to any governmental body. Such sworn statement shall be signed by the principal officer of said defendant, by the person actually responsible for the preparation of said bid, and by the person who signed said bid; and a duplicate of each such sworn statement and of such bid, together with the work papers used in the preparation of such bid shall be kept in the files of the defendant for a period of six years from the date of execution of such bids.

VIII

For the purpose of 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 signatory hereto made to its principal office, be permitted, subject to any legally recognized privilege:

(a) reasonable access during the office hours of such defendants, 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 of the matters contained in this Final Judgment; and

(b) subject to the reasonable convenience of such defendant, and without restraint or interference, to interview officers and employees of such 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, the defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment. No information obtained by the means permitted in this Section 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 for the purpose of securing compliance with this Final Judgment in which the United States is a party or as otherwise required by law.

IX

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