

U. S. v. ALUMINUM COMPANY OF AMERICA.

IN THE UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF PENNSYLVANIA.

In Equity No. 159.

UNITED STATES OF AMERICA, PETITIONER,
VS.

ALUMINUM COMPANY OF AMERICA, DEFENDANT.

DECREE.

This cause coming on to be heard on this 7th day of June, 1912, before the Hon. James M. Young, District Judge, and the petitioner having appeared by its district attorney, John H. Jordan, and by Wm. T. Chantland, its special assistant to the Attorney General, and having moved the court for an injunction in accordance with the prayer of its petition, and it appearing to the court that the allegations of the petition state a cause of action against the defendant under the provisions of the act of July 2, 1890, known as the Anti-Trust Act, that it has jurisdiction of the subject matter, and that the defendant has been regularly served with proper process, and has appeared in open court, by George B. Gordon, its counsel, and has given its consent to the entering and rendition of the following decree:

Now, therefore, it is ordered, adjudged, and decreed:

1. That sections 2, 4, and 5 of the agreement entered into as of date September 25, 1908, between the Societe Anonyme pour l'Industrie de l'Aluminum of Neuhausen

and the Northern Aluminum Company (Ltd.), acting on behalf of the defendant corporation, as follows, to wit:

2. The N. A. Co. agree not to knowingly sell aluminum directly or indirectly in the European market.

3. The A. J. A. G. agree not to knowingly sell aluminum directly or indirectly in the American market.

4. The total deliveries to be made by the two companies shall be divided as follows:

European market, 75 per cent to A. J. A. G., 25 per cent to N. A. Co.

American market, 25 per cent to A. J. A. G., 75 per cent to N. A. Co.

Common market, 50 per cent to A. J. A. G., 50 per cent to N. A. Co.

The Government sales to Switzerland, Germany, and Austria-Hungary are understood to be reserved to the A. J. A. G.

The sales in the U. S. A. are understood to be reserved to the Aluminum Company of America.

Accordingly the A. J. A. G. will not knowingly sell aluminum directly or indirectly to the U. S. A. and the N. A. Co. will not knowingly sell directly or indirectly to the Swiss, German, and Austria-Hungarian Governments.

5. The N. A. Co. engages that the Aluminum Company of America will respect the prohibitions hereby laid upon the N. A. Co.

be and the same are hereby declared null and void, and that the defendant Aluminum Company of America, and all its agents and representatives in whatever capacity, are hereby perpetually enjoined from directly or indirectly requiring the parties to said contract to abide by its terms, and defendant is further enjoined from either directly or indirectly entering into, through said Northern Aluminum Company, or any other person or corporation, and from making or aiding in making any agreement containing provisions of the nature of those hereinbefore set out, in so far as they relate to the sale of aluminum in the United States, or its importation into or exportation from the United States, or any contract or agreement, either verbal

or written, the purpose and effect of which would be to restrain the importation into the United States, from any part of the world, of aluminum, or alumina, or bauxite, or any other material from which aluminum can be manufactured, or to fix or illegally affect the prices of aluminum, alumina, bauxite, or other material, when imported.

2. That the fourth and eighth paragraphs of the agreement entered into, under date of July 5, 1905, between the defendant Aluminum Company of America, under its former name, Pittsburgh Reduction Company, and the General Chemical Company, a corporation, which paragraphs read as follows:

Fourth. Said Chemical Company further expressly covenants and agrees that it will not use or knowingly sell any of the bauxite sold to it by the said Bauxite Company hereunder, or any other bauxite, or the products thereof for the purpose of conversion into the metal aluminum, and that upon proof that any of said bauxite or products thereof have been put to any such use it will not make any further sales or deliveries to the purchaser thereof.

Eighth. It is understood and agreed that the bauxite sold hereunder by the said Bauxite Company to the said Chemical Company shall be used by the said Chemical Company and by companies under its control of whose stock is largely held by it, and by no other person or party, and only for the manufacture of alum, alum salts, alumina sulphate or alumina hydrate for alum and its compounds, and for no other purpose whatsoever—
be, and they are, hereby declared null and void and are stricken out of said contract; and that the fifth section of said contract which reads as follows:

Fifth. The said Reduction Company agrees to use its good offices in the interest of said Chemical Company so far as relates to promoting the trade of the latter in alum and alum products in the United States and in foreign countries; and said Chemical Company reciprocally undertakes and agrees to use its good offices in the interest of said Reduction Company so far as relates to promoting

the metal business of the latter in the United States and in foreign countries—

in so far as it may be considered as an agreement upon the part of the General Chemical Company to antagonize the interests of the competitors of the defendant company, be and it is hereby declared to be null and void, and that defendant and all its agents and representatives be, and they are, hereby perpetually enjoined from in any manner, and to any extent, requiring an enforcement of said provisions, and from entering into or acting in pursuance of any contract or agreement the purpose and effect of which would be to place any restraint upon the General Chemical Company with reference to the right of said company to acquire and sell, or the quantity which it may acquire and sell, or the price at which it may acquire and sell any bauxite, alumina or aluminum of which it may become the owner by purchase, manufacture, or otherwise.

3. That the tenth and eighteenth sections of the contract entered into under date of April 20, 1909, between the defendant Aluminum Company of America and the Norton Company, which sections read as follows, to wit:—

Tenth. Norton Company may mine and use bauxite from the said forty-acre tract of bauxite land referred to in paragraph D above, which shall be used for the purpose of manufacturing aluminum, and may mine and sell from the said property bauxite or other mineral taken therefrom for any purpose except for the manufacture of aluminum, and Norton company shall not sell or otherwise dispose of said forty-acre tract except subject to the above restrictions.

Eighteenth. Norton Company shall not at any time during the continuance of this agreement use or sell any of the bauxite contained on the said forty-acre tract described in paragraph D above, or any other bauxite, or the products thereof, hereafter acquired by Norton Company, in the United States of America or the Dominion of Canada for the purpose of conversion into aluminum— and all other parts of said contract, in so far as they restrain or seek to restrain the Norton Company from exer-

cising its free and independent will in using and disposing of the bauxite which it may receive under the provisions of said contract, or any other bauxite which it may obtain, be and the same are hereby declared null and void and are abrogated; and that the defendant, and its officers and agents, be perpetually enjoined from in any manner or to any extent enforcing or requiring recognition by the Norton Company of such provisions, and from hereafter entering into any contract with said Norton Company, the purpose and effect of which would be to restrain said Norton Company in the disposition of any bauxite which may be obtained from any source, or any alumina or aluminum which it may manufacture from such bauxite, or may otherwise obtain.

4. That the following clause in a contract between defendant and the Pennsylvania Salt Manufacturing Company to wit:

The Pennsylvania Salt Manufacturing Company agrees not to enter into the manufacture of aluminum as long as this agreement is in force—

and the ratification and extension of said clause contained in a letter from the Pennsylvania Salt Manufacturing Company to defendant, dated January 1, 1907, be and the same are hereby declared null and void; and that defendant Aluminum Company of America and its officers and agents be and they are hereby perpetually enjoined hereafter from in any manner or to any extent enforcing or relying upon said clause and its ratification, and from entering into any contract with said Pennsylvania Salt Manufacturing Company, the purpose and effect of which would be to restrain said Pennsylvania Salt Manufacturing Company from freely making any disposition that it may see proper, and at any price it may deem proper, of any bauxite, alumina or aluminum, the ownership of which it may acquire from any source.

5. That that part of the agreement entered into as of date November 16, 1910, by defendant Aluminum Company of America and Gustave A. Kruttschnitt, of Newark,

New Jersey, and James C. Coleman, of Newark, New Jersey, which provides that—

As part consideration for the execution of this agreement by Aluminum Company, Kruttschnitt and Coleman hereby severally agree that for the period of twenty years from the date hereof, in that part of the United States east of a north and south line through Denver, Colorado, neither Kruttschnitt nor Coleman will directly or indirectly engage or become interested in the manufacture or fabrication or sale of aluminum or any article made substantially of aluminum, provided that either or both the said Kruttschnitt and Coleman may be employed by or become interested in the Aluminum Company or said Aluminum Goods Manufacturing Company without committing a breach of this contract—

in so far as it constitutes a restraint upon said Kruttschnitt and Coleman from freely engaging in any part or branch of the aluminum business, be and the same is hereby declared to be null and void, and that the defendant, and its officers, agents, and representatives be and they are hereby perpetually enjoined from entering into a contract with said Kruttschnitt or Coleman or with any other individual, firm, or corporation of a like or similar character to the above-quoted provisions of said contract, except as the same may be a lawful incident to the purchase of good will.

6. That the defendant and its officers, agents, and representatives be and they are hereby perpetually enjoined from entering into a contract with any other individual, firm, or corporation of a like or similar character to the above-quoted provisions in the contracts between the Aluminum Company of America and the General Chemical Company, between said Aluminum Company and the Norton Company, between said Aluminum Company and the Pennsylvania Salt Manufacturing Company, and between said Aluminum Company and Kruttschnitt and Coleman, or either of them, and from entering into or participating in any combination or agreement the purpose or effect of which is to restrict or control the output

or the prices of aluminum or any material from which aluminum is directly or indirectly manufactured, and from making any contract or agreement for the purpose of or the effect of which would be to restrain commerce in bauxite, alumina, or aluminum, or to prevent any other person, firm or corporation from or to hinder him or it in obtaining a supply of either bauxite, alumina, or aluminum of a good quality in the open market in free and fair and open competition, and from themselves entering into or compelling or inducing, under any pretext, or in any manner whatsoever, the making of any contact between any persons, firms, or corporations engaged in any branch of the business of manufacturing aluminum goods the purpose or effect of which would be to fix or regulate the prices of any of their raw or manufactured products in sale or resale.

7. To prevent all undue discrimination upon the part of defendant and its officers and agents, or upon the part of any firm or corporation in whose business defendant owns or hereafter acquires a financial interest by stock ownership or otherwise, against any competitor of defendant, and thus to prevent the unlawful acquisition by defendant of a monopoly in any branch of manufacturing from crude or semifinished aluminum, defendant and its officers, agents, and representatives, are hereby perpetually enjoined from committing the following acts, to wit:

(a) Combining either by stock ownership or otherwise with any one or more manufacturers for the purpose or with the effect of controlling or restraining the output of any product manufactured from aluminum, or fixing or controlling the price thereof.

(b) Delaying shipments of material to any competitor without reasonable notice and cause, or refusing to ship or ceasing to continue shipments of crude or semifinished aluminum to a competitor on contracts or orders placed, and particularly on partially filled orders, without any reasonable cause and without giving notice of same, or purposely delaying bills of lading on material shipped to any competitor, or in any other manner making it im-

possible or difficult for such competitor promptly to obtain the material upon its arrival, or from furnishing known defective material.

(c) Charging higher prices for crude or semifinished aluminum from any competitor than are charged at the same time under like or similar conditions from any of the companies in which defendant is financially interested, or charging or demanding higher prices for any kind of crude or semifinished aluminum from any competitor for the purpose or which under like or similar conditions will have the effect of discriminating against such manufacturers in bidding on proposals or contracts to the advantage of said defendant or any company in which it is financially interested.

(d) Refusing to sell crude or semifinished aluminum to prospective competitors in any branch of the manufacturing aluminum goods industry on like terms and conditions of sale, under like or similar circumstances, as defendant sells such crude or semifinished aluminum to any firm or corporation engaged in similar business in which defendant is financially interested.

(e) Requiring, as a condition precedent to selling crude or semifinished aluminum to a competitor, that such competitor divulge to defendant the terms which such competitor proposes to make in order to secure the work in which the desired aluminum is to be used, and from imparting to any one the purpose or purposes for which said competitor is intending to use said metal.

(f) Requiring or compelling the making of agreements by competitors not to engage in any line of business nor to supply any special order in competition with defendant or with any company in which it is financially interested as a condition precedent to the procurement of aluminum metal.

(g) Representing or intimating to competitors that unless they dealt with defendant or with companies in which defendant has a financial interest for their supply of metal such competitor will not be able to obtain a sufficient supply of metal or obtain it at a price that will

permit them to engage in competition with defendant or with companies in which defendant is financially interested; or in like manner representing or intimating to consumers of aluminum in any stage of manufacture that unless they deal with defendant or with a company in which it is financially interested, their supply of material or manufactured products will be cut off for that reason.

(h) Taking the position with persons, firms, or corporations engaged in the manufacture of any kind of aluminum goods that if they attempt to enlarge or increase any of their industries or engage in enterprises that are or will be competitive with defendant or with the business of any firm or corporation in which defendant is financially interested such persons, firms, or corporations will for that reason be unable to procure their supply of material from defendant or any of the companies in which it is financially interested.

The term "competitor," as used above, shall be construed to mean all persons, firms, or corporations engaged in or who are actually desiring or about to engage in the manufacture of any kind of products or goods from crude or semifinished aluminum, whose business is not controlled or not subject to be controlled by defendant, its officers and agents, either by virtue of ownership of all or a part of the capital stock of such concerns or through any other form or device of financial interest.

Provided, however, that nothing contained in this decree shall be construed to prevent or restrain the lawful promotion of the aluminum industry in the United States.

Provided, further, that nothing herein contained shall obligate defendants to furnish crude aluminum to those who are not its regular customers to the disadvantage of those who are whenever the supply of crude aluminum is insufficient to enable defendant to furnish crude aluminum to all persons who desire to purchase from defendant, but this proviso shall not relieve defendant from its obligation to perform all its contract obligations, and neither shall this proviso, under the conditions of insufficient supply of crude aluminum referred to, be or constitute a permission

to defendant to supply such crude aluminum to its regular customers mentioned with the purpose and effect of enabling defendant or its regular customers, under such existing conditions, to take away the trade and contracts of competitors.

Provided, further, that nothing in this decree shall prevent defendant from making special prices and terms for the purpose of inducing the larger use of aluminum, either in a new use or as a substitute for other metals or materials.

Provided, further, that nothing in this decree shall prevent the acquisition by defendant of any monopoly lawfully included in any grant of patent right.

Provided, further, that the raising by defendant of prices on crude or semifinished aluminum to any company which it owns or controls or in which it has a financial interest, regardless of market conditions, and for the mere purpose of doing likewise to competitors while avoiding the appearance of discrimination, shall be a violation of the letter and spirit of this decree.

This decree having been agreed to and entered upon the assumption that the defendant, Aluminum Company of America, has a substantial monopoly of the production and sale of aluminum in the United States, it is further provided that whenever it shall appear to the court that substantial competition has arisen, either in the production or sale of aluminum in the United States, and that this decree in any part thereof works substantial injustice to defendant, this decree may be modified upon petition to the court after notice and hearing on the merits, provided that such applications shall not be made oftener than once every three years.

It is further ordered that the defendants pay the costs of suit to be taxed.

Per curiam:

JAMES M. YOUNG,
Judge.