

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Monsanto Co., Farbenfabriken Bayer A. G., and Mobay Chemical Co., U.S. District Court, W.D. Pennsylvania, 1967 Trade Cases ¶72,001, (Mar. 20, 1967)

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United States v. Monsanto Co., Farbenfabriken Bayer A. G., and Mobay Chemical Co.

1967 Trade Cases ¶72,001. U.S. District Court, W.D. Pennsylvania. Civil No. 64-342. Entered March 20, 1967. Case No. 1797 in the Antitrust Division of the Department of Justice.

Clayton and Sherman Acts

Joint Ventures—Chemicals—Sale to Co-venturer—Consent Decree.—A chemical firm which entered into a joint venture with another chemical company for the production of flexible urethane foam was required under the terms of a consent judgment to sell its share of the newly created firm to its co-venturer. The decree bars the seller from having officers in common and agreeing not to compete with the sold firm, and places restrictions upon the purchaser's ability to transfer the purchased firm or its business. The decree prohibits the seller for ten years from acquiring any facilities being used in the production of the foam or a component of the foam (except incidental to permissible acquisitions).

For the plaintiff: Donald F. Turner, Assistant Attorney General; Lewis Rubin, W. D. Kilgore, Raymond M. Carlson, Joseph H. Widmar, Kathleen Devine, and William J. Levy, Attorneys, Department of Justice.

For the defendants: Edward K. Trent, of Reed, Smith, Shaw & McClay; Sherman & Sterling, by Charles C. Parlin, Jr., for Monsanto Co. and Mobay Chemical Co. Lloyd R. Mellot, Allen F. Maulsby, and Lloyd N. Cutler for Farbenfabriken Bayer A. G.

Final Judgment

MILLER, District Judge: Plaintiff, United States of America, having filed its complaint herein on April 13, 1964, and its amended complaint on February 13, 1967, and each of the defendants, Monsanto Company, Farbenfabriken Bayer A. G. and Mobay Chemical Company, having appeared and filed answers denying the substantive allegations of such complaint and amended complaint, and plaintiff and defendants, by their respective attorneys, having severally 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 any 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 the consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The amended complaint herein states a claim for relief against defendants under Section 1 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, commonly known as the Sherman Act, and under Section 7 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, as amended, commonly known as the Clayton Act.

II

[*Definitions*]

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As used in this Final Judgment and for such purposes only:

- (a) "Monsanto" shall mean defendant Monsanto Company, a corporation organized and existing under the laws of the State of Delaware, with its principal office at St. Louis, Missouri, its subsidiaries and affiliates;
- (b) "Farbenfabriken Bayer A. G." shall mean defendant Farbenfabriken Bayer A. G., a corporation organized and existing under the laws of the Federal Republic of Germany, with its principal office at Leverkusen, Germany, its subsidiaries and affiliates;
- (c) "Mobay" shall mean defendant Mobay Chemical Company, a corporation organized and existing under the laws of the State of Delaware, with its principal office at Pittsburgh, Pennsylvania, its subsidiaries and affiliates; and
- (d) "Subsidiary" shall mean a company of which the parent owns more than 50% of the outstanding capital stock; "affiliate" shall mean a company of which the parent owns 50% or less of the outstanding capital stock.

III

[Sale of Firm]

On or before March 31, 1967, Monsanto shall sell to Farbenfabriken Bayer A. G., and Farbenfabriken Bayer A. G. shall purchase from Monsanto, all Monsanto's interest in Mobay.

IV

[Common Officials]

Effective within three months after the sale pursuant to Section III hereof, Monsanto shall not have or allow to serve as an officer or director of Monsanto any individual whom it knows to be an officer, director or managing agent of Mobay, and Mobay shall not have or allow to serve as an officer, director or managing agent of Mobay any individual whom it knows to be an officer or director of Monsanto or, effective within eighteen months after such sale, any individual whom it knows to be an employee of Monsanto.

V

[Prohibition Against Transfer]

For a period of ten years from the date of this Final Judgment, Farbenfabriken Bayer A. G. and Mobay shall be prohibited from selling or transferring any of the shares of Mobay or any substantial part of the isocyanate business of Mobay with out having given thirty days' prior written notice to plaintiff and, if the purchaser or transferee is a manufacturer or seller, directly or indirectly, of chemicals or allied products, or of urethane foam or of a product utilizing such foam, without approval by plaintiff or, failing such approval, by the Court on a showing that such sale or transfer would not violate [Section 7 of the Clayton Act](#); provided, however, that this Section V shall not be construed to prohibit any transactions between or among Farbenfabriken Bayer A. G. and/or Mobay.

VI

[Acquisition Bar]

For a period of ten years from the date of this Final Judgment, Monsanto shall be prohibited from acquiring directly or in directly all or any part of any facilities being used in the production in the United States of TDI (80-20) or in the production in the United States of flexible urethane foam made from TDI (80-20) or any capital stock of any corporation engaged in the business of manufacturing in the United States TDI (80-20) or in the production in the United States of flexible urethane foam made from TDI (80-20) (except that Monsanto may acquire such facilities or stock incidental to an acquisition made for other purposes upon filing with the Court an undertaking to dispose promptly of such facilities or business) unless such acquisition is approved by plaintiff or, failing such approval, by the Court on a showing that such acquisition would not substantially lessen competition or tend to create a monopoly in TDI (80-20) or any product made therefrom; provided, however, that Monsanto

shall not be prohibited either from purchasing in the normal course of business any chemicals, commodities, machinery, equipment or other products usable in the manufacture of TDI (80-20) or from acquiring in good faith the stock or assets of any corporation in the exercise of any security or debt or liability enforcement process, whether provided by law or bona fide agreement, so long as Monsanto shall dispose of such stock or assets within a reasonable period of time.

VII

[*Competition*]

Monsanto shall be free to enter into competition with Mobay or Farbenfabriken Bayer A. G. in any line of commerce, and any agreement or understanding, express or implied, between Mobay or Farbenfabriken Bayer A. G. and Monsanto, if any there be, restraining Monsanto from competing with Mobay or Farbenfabriken Bayer A. G., is hereby prohibited.

VIII

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment and for no other purpose:

(a) duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(1) access during the office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession, custody or control of such defendant related to any matters contained in this Final Judgment; and

(2) subject to the reasonable convenience of such defendant, but without restraint or interference from it, to interview officers, directors, agents or employees of such defendant, who may have counsel present, regarding any such matters;

(b) upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, any defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be requested;

provided, however, that no information obtained by the means provided in this Section VIII 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 legal proceedings in which the Department of Justice is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

IX

[*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 effectuation of this Final Judgment, for the modification or termination of any of the provisions hereof, for the enforcement of compliance herewith and for the punishment of violations hereof!