

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Republic Steel Corporation, et al., U.S. District Court, N.D. Ohio, 1952-1953 Trade Cases ¶67,510, (Jun. 15, 1953)

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United States v. Republic Steel Corporation, et al.

1952-1953 Trade Cases ¶67,510. U.S. District Court, N.D. Ohio. Eastern Division. Civil Action No. 26043. Filed June 15, 1953. Case No. 964 in the Antitrust Division of the Department of Justice.

Clayton Antitrust Act and Sherman Antitrust Act

Consent Decrees—Practices Enjoined—Allocation of Markets, Exclusive Dealing, Refusing To Deal, and Discriminating in Price or Services—Manufacturer of Corrugated Metal Sheets and Fabricators of Culverts.—A manufacturer of corrugated metal sheets and fabricators of corrugated metal culverts were enjoined by a consent decree from (A) entering into any agreement or from requesting persons to enter into any agreement (1) to allocate markets, customers, or territories for production, (2) to deal exclusively with any person, and (3) to exclude any manufacturer or seller from any territory or market; and from (B) refusing to sell to or purchase from any person, imposing discriminatory terms or prices, or refusing to make available services or technical information because of the refusal of any person to enter into any agreement contrary to (A) above.

Consent Decrees—Practices Enjoined—Requirement Contracts Exclusive Dealing, Limitations on Use, and Sales Limitations.—A manufacturer of corrugated metal sheets was enjoined by a consent decree from entering into any agreement, from refusing to sell because any person has refused to accept an agreement, or from entering into any plan which has as its purpose the making of an agreement, on condition (1) that the purchaser shall purchase all of its requirements of such sheets from the manufacturer, (2) that the purchaser shall not purchase such sheets or culverts manufactured by any other person, (3) that the purchaser shall also purchase from the manufacturer any type of culvert not fabricated by such purchaser, (4) that the purchaser shall not use such sheets purchased from the manufacturer for any other purpose, and (5) that the purchaser agrees to limit its sales of culverts to any quota or to any portion of the market.

Consent Decrees—Practices Enjoined—Trade Association—Membership Activities.— A culvert manufacturers' trade association was enjoined by a consent decree from (1) accepting or soliciting any membership fees from a manufacturer of corrugated metal sheets, (2) admitting such manufacturer to membership in, or permitting such manufacturer to direct or dominate any of the activities of the association, and (3) requesting any defendant to violate any of the provisions of the consent decree.

Consent Decrees—Specific Relief—Sale of Products.—A manufacturer of corrugated culvert sheets was ordered by a consent decree to sell such sheets to all fabricators of corrugated metal culverts, for a period of five years and upon orders placed in good faith and seasonably in accordance with the manufacturer's current trade practices, at non-discriminatory prices and terms and without any discrimination as to trademarks or in the filling of orders. This order was subject to not less than such part of $66 \frac{2}{3}$ per cent of the manufacturer's total production of such' sheets for each such, year as the fabricators shall offer to purchase.

Consent Decrees—Specific Relief-Trade Association—Membership. A culvert manufacturers' trade association was ordered by a consent decree to admit to membership any independent fabricator which uses corrugated culvert sheets manufactured by a named defendant, without any condition or restriction, except that, on a nondiscriminatory basis, (1) a reasonable and uniform membership fee and annual dues may be imposed, and (2) by-laws not inconsistent with any provision of the consent decree may be adopted.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; and Edwin H. Pewett, Allen A. Dobey, Vincent A. Gorman, and Robert W. Murray, Attorneys for the United States.

For the defendants: Luther Day and Thomas F. Patton, Cleveland, Ohio, for Republic Steel Corporation; Ralph W. Malone, Dallas, Texas, for Wyatt Metal and Boiler Works; Ashley M. Van Duzer, Cleveland, Ohio, for Toncaii

Culvert Manufacturers Ass'n, Inc., Beall Pipe and Tank Corp. Berger Metal Culvert Co., Inc., The Boardman Co., Central Culvert Corp., Choctaw, Inc., V. R. Conner and S. V. Conner, doing business as The Conner Manufacturing Co., a co-partnership, Dominion Metal and Culvert Corp., Eaton Metal Products Corp., Eaton Metal Products Co. of Montana, Empire State Culvert Corp., Illinois Culvert and Tank Co., A. P. Jensen and L. S. Frame, doing business as Jensen Bridge and Supply Co., a co-partnership, H. V. Johnston Culvert Co. of Minneapolis, Minnesota, H. V. Johnston Culvert Co. of Aberdeen, South Dakota, M and M Hiway Materials Co., Thompson Pipe and Steel Co., Tri-State Culvert and Manufacturing Co., and Wisconsin Culvert Co.

Final Judgment

[*Judgment Entered by Consent*]

FREED, District Judge [*In full text*] Plaintiff, United States of America, having filed its complaint herein on November 30, 1948, the defendants having appeared and filed their answers denying the substantive allegations thereof; and the plaintiff and the defendants by their attorneys having severally consented to the entry of this Final Judgment without trial of any issue of fact or law herein and without admission by the parties in respect of any such issue, and the Court having considered the matter and being duly advised;

Now, therefore, before any testimony has been taken and without trial 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

[*Cause of Action Under Sherman and Clayton Acts*]

This Court has jurisdiction of the subject matter hereof and of the parties hereto, and the complaint states a cause of action against the defendants 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," as amended, commonly known as the Sherman Act, and under Section 3 of the Act of Congress of October 15, 1914, commonly known as the Clayton Act, as amended.

II

[*Definitions*]

As used in this Final Judgment,

(A) "Corrugated metal culvert" shall mean any tube or channel commonly used for drainage purposes, constructed from corrugated culvert sheets, finished, plain, dipped, galvanized or paved, including full circle culvert, part circle culvert, nestable culvert and arches;

(B) "Corrugated culvert sheets" shall mean corrugated metal sheets in the gauges, sizes, analyses and weights of coating of the type sold to manufacturers of corrugated metal culverts for use in the fabrication thereof;

(C) "Republic" shall mean the defendant Republic Steel Corporation, a corporation organized and existing under the laws of New Jersey;

(D) "The Association" shall mean the defendant Toncan Culvert Manufacturers Association, Inc., a corporation organized and existing under the laws of Ohio;

(E) "Defendant fabricators" shall mean the defendants Beall Pipe & Tank Corporation, Berger Metal Culvert Co., Inc., The Boardman Co., Central Culvert Corporation, Choctaw, Inc., V. R. Conner and S. V. Conner doing business as The Conner Manufacturing Company, a co-partnership, Dominion Metal and Culvert Corporation, Eaton Metal Products Corporation, Eaton Metal Products Co. of Montana, Empire State Culvert Corporation, Illinois Culvert & Tank Company, A. P. Jensen and L. S. Frame doing business as Jensen Bridge and Supply Company, a co-partnership, H. V. Johnston Culvert Co. of Minneapolis, Minnesota, H. V. Johnston Culvert Co. of Aberdeen, South Dakota, M & M Hiway Materials Company, Thompson Pipe and Steel Company, Tri-State

Culvert & Manufacturing Company, Wisconsin Culvert Company, Wyatt Metal & Boiler Works, and each of them, and their majority-owned or controlled subsidiaries;

(F) "Independent fabricator" shall mean a fabricator of corrugated metal culverts from corrugated culvert sheets, but shall not include (i) any defendant fabricator, (ii) Republic, (iii) any majority-owned or controlled subsidiary of Republic, (iv) any manufacturer of corrugated culvert sheets, or (v) any majority-owned or controlled subsidiary of such manufacturer;

(G) "Person" shall mean an individual, partnership, firm, corporation, association, trustee or other business or legal entity.

III

[*Applicability of Judgment*]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons acting under, through or for such defendant, its subsidiaries, successors or assigns.

IV

[*Allocation of Markets, Exclusive Dealing, and Refusing To Deal Prohibited*]

Republic and the defendant fabricators are jointly and severally enjoined and restrained from:

(A) Entering into, adhering to, maintaining or furthering or claiming any rights under, any contract, agreement or understanding, directly or indirectly, with any defendant or any other person, providing for, or for the purpose of:

(1) allocating, apportioning or dividing markets, customers, product or territories for the production, distribution or sale of corrugated metal culverts or corrugated culvert sheets;

(2) dealing exclusively with, or having any person deal exclusively with, any other person in the sale, purchase or other distribution of corrugated culvert sheets or corrugated metal culverts, but, subject to the provisions of Section VII hereof, nothing in this Final Judgment shall prevent any person at any time or during any period from purchasing corrugated culvert sheets or corrugated metal culverts from Republic in such amounts as such person may desire;

(3) excluding any manufacturer, seller or distributor (including any of such defendants) of corrugated metal culverts from any territory or market; or interfering with or restraining any such manufacturer, seller or distributor in competing in any territory or market;

(B) Requesting, requiring, inducing or persuading any buyer from or seller to any of such defendants to enter into or adhere to any contract, agreement or understanding, contrary to any of the provisions of subsection (A) of this Section IV;

(C) Because of the refusal of any person to enter into or adhere to any contract, agreement or understanding contrary to any of the provisions of subsection (A) of this Section IV:

(1) refusing to sell to or purchase from any such person any corrugated culvert sheets or corrugated metal culverts;

(2) imposing on any such person discriminatory terms, conditions or prices in the sale or purchase of any corrugated culvert sheets or corrugated metal culverts;

(3) refusing to make available to any such person services or technical information relating to corrugated culvert sheets or corrugated metal culverts.

V

[*Exclusive Dealing and Requirement Contracts Prohibited*]

Republic is hereby enjoined and restrained from:

(A) Entering into, performing, enforcing, furthering or adhering to any contract or agreement to sell or of sale, on or accompanied by any condition, agreement or understanding, express or implied:

(1) that the purchaser shall purchase from Republic all its requirements of corrugated culvert sheets, but, subject to the provisions of Section VII hereof, nothing in this Final Judgment shall prevent any person at any time or during any period from purchasing corrugated culvert sheets or corrugated metal culverts from Republic in such amounts as such person may desire;

(2) that the purchaser shall not purchase corrugated culvert sheets or corrugated metal culverts manufactured or supplied by any person other than Republic or any other designated source;

(3) that the purchaser shall also purchase from Republic any type of corrugated metal culvert not fabricated by such purchaser;

(4) that the purchaser shall not use corrugated culvert sheets purchased from Republic for any purpose other than the fabrication of corrugated metal culverts; or that the purchaser shall use corrugated culvert sheets purchased from Republic only for the fabrication of corrugated metal culverts or for any other designated purpose;

(5) that the purchaser agrees to limit its sales of corrugated metal culverts to any volume, quota or percentage, or to any portion of the market.

(B) Refusing to sell, or discriminating in any sale, to any person because such person (i) refuses to accept or adhere to any condition, agreement or understanding, express or implied, contrary to any of the provisions of subsection (A) of this Section V, or (ii) is not, or indicates an unwillingness to become, a member of the Association;

(C) Entering into, adopting or adhering to any plan, program, or policy which has as its purpose the making or adhering to a condition, agreement or understanding contrary to any of the provisions of subsection (A) of this Section V; or entering into, adopting or adhering to any course of conduct contrary to any of the provisions of subsection (B) of this Section V.

VI

[*Trade Association's Membership*]

(A) The Association is enjoined and restrained from:

(1) accepting, collecting, procuring or soliciting, or causing to be accepted, collected, procured or solicited, any dues or any other membership fees from Republic or, through Republic, directly or indirectly, from any member;

(2) admitting Republic to membership in, or permitting Republic to direct or dominate any of the activities of the Association;

(3) requesting, requiring, inducing or persuading any defendant to violate any of the provisions of this Final Judgment, or entering into, adopting or adhering to any course of conduct contrary to any of the provisions of this Final Judgment.

(B) The Association is ordered and directed to admit to membership therein, upon application being made, any independent fabricator which uses, in whole or in part, corrugated culvert sheets manufactured by Republic, without any condition or restriction whatsoever, except that, on a nondiscriminatory basis:

(1) a reasonable and uniform membership fee and annual dues may be imposed; and

(2) by-laws and other regulations, including reasonable nondiscriminatory provisions relative to qualifications of membership, not inconsistent with any provision of this Final Judgment may be adopted.

VII

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[*Sale of Products Ordered*]

Defendant Republic is ordered and directed, for a period of five years following the date of entry of this Final Judgment, but in any event only so long as it shall produce corrugated culvert sheets, to make available and to sell each calendar year to defendant fabricators and independent fabricators, upon orders placed (a) in good faith for use in their own manufacturing operations and (b) seasonably in accordance with Republic's then current trade practices, at and upon nondiscriminatory prices, terms and conditions, and without any discrimination as to trademarks or in the filling of orders, but subject to Republic's regular terms and conditions of sale, not less than such part of 66 2/3% of Republic's total production of corrugated culvert sheets for each such year as such fabricators shall offer to purchase.

VIII

[*Compliance and Visitation*]

For the purpose of securing compliance with this Final Judgment, 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 Anti-Trust Division, and on reasonable notice to any defendant, made to its principal office, be permitted, subject to any legally recognized privilege:

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

(B) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of said defendant, who may have counsel present, regarding such matters, and, upon such request, said defendant shall submit such reports in writing as from time to time may be necessary for the enforcement of this Final Judgment.

No information obtained by the means provided in this Section VIII shall be divulged by the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings in which the United States is a party, or as otherwise required by law.

IX

[*Jurisdiction Retained*]

Jurisdiction 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 amendment or modification of any of the provisions thereof, the enforcement of compliance therewith, and the punishment of violations thereof.