

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Air Conditioning and Refrigeration Wholesalers, et al., U.S. District Court, N.D. Ohio, 1976-2 Trade Cases ¶61,160, (Oct. 8, 1976)

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United States v. Air Conditioning and Refrigeration Wholesalers, et al.

1976-2 Trade Cases ¶61,160. U.S. District Court, N.D. Ohio, Eastern Division. Civil No. C-70-829. Entered October 8, 1976. (Competitive impact statement and other matters filed with settlement: 41 *Federal Register* 19134, 35866). Case No. 2127, Antitrust Division, Department of Justice.

Sherman Act

Refusal To Deal—Refrigerant Gas Manufacturers—Agreements Not To Sell—Exchange of Information on Distribution—Association. Membership—Consent Decree.—Manufacturers of refrigerant gas and a trade association were barred by a consent decree from agreeing with any manufacturer, or group of purchasers, of refrigerant gas to refuse to sell such gas to any group or class of customers. Additionally, for a five-year period, the decree enjoined discussions among manufacturers regarding distribution policies; prohibited the trade association from permitting any such discussions at its meetings or in its publications; and required the manufacturers to sell refrigerant gas to any reseller under terms and conditions set out in the consent decree. The trade association also was required to create a new class of membership open to any reseller of refrigerant gas.

For plaintiff: Thomas E. Kauper, Asst. Atty. Gen., and Baddia J. Rashid, Charles F. B. McAleer, Robert S. Zuckerman, and John L. Wilson, Attys., Dept. of Justice.

For defendants: William T. Lifland, of Cahill Gordon & Reindel, New York, N. Y., for Allied Chemical Corp.; Daniel M. Gribbon, of Covington & Burling, Washington, D. C., for E. I. du Pont de Nemours and Co.; Robert L. Price, of Kaiser Aluminum and Chemical Corp., Oakland, Cal., for Kaiser Aluminum & Chemical Corp. and Kaiser Aluminum & Chemical Sales, Inc.; Henry Kolowrat, of Dechert Price & Rhoads, Philadelphia, Pa., for Pennwalt Corp.; J. L. Weigand, Jr., of Wiegand, Curfman, Brainerd, Harris & Kaufman, Wichita, Kans., for Racon Inc.; George Meisel, of Squire, Sanders & Dempsey, Cleveland, Ohio, for Union Carbide Corp.; and John D. Leech, for Air Conditioning and Refrigeration Wholesalers.

Final Judgment

THOMAS, D. J.: Plaintiff, United States of America, having filed its complaint herein on August 28, 1970, and defendants having filed their answers thereto denying the material allegations of the complaint, and plaintiff and defendants Air Conditioning and Refrigeration Wholesalers ("ARW"), Allied Chemical Corporation, E. I. du Pont de Nemours & Company, Kaiser Aluminum & Chemical Corporation, Kaiser Aluminum & Chemical Sales, Inc., Pennwalt Corporation, Racon Incorporated, and Union Carbide Corporation, by their respective attorneys, having consented to the 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 admission by any party hereto with respect to any such issue;

Now, Therefore, before the taking of any testimony and upon consent of the parties hereto:

It is Hereby Ordered, Adjudged and Decreed, as follows:

I.

[*Jurisdiction*]

This Court has jurisdiction over the subject matter and the parties consenting hereto. The complaint states claims upon which relief may be granted against defendants under Sections 1 and 2 of the Act of Congress

of July 2, 1890, as amended, entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” commonly known as the Sherman Act ([15 U. S. C. A. §§ 1](#) and 2).

II.

[*Definitions*]

As used in this Final Judgment:

- (A) “Refrigerant gas” or “gas” means gas created by various combinations of carbon, chlorine, fluorine, and in some instances hydrogen, which is sold for use in air-conditioning and refrigeration equipment.
- (B) “Defendant manufacturers” means the defendants Allied Chemical Corporation, E. I. du Pont de Nemours & Company, Pennwalt Corporation, Racon Incorporated, Union Carbide Corporation, Kaiser Aluminum & Chemical Corporation, and Kaiser Aluminum & Chemical Sales, Inc. (said Kaiser defendants being considered one entity for purposes of the Final Judgment).
- (C) “Person” means any individual, partnership, firm, corporation, association, or other business or legal entity.
- (D) “Reseller” means any person, other than a manufacturer of refrigerant gas, which is engaged in the United States in the business of purchasing refrigerant gas for resale to contractors, dealers, installers, servicemen, or other resellers.

III.

[*Applicability*]

The provisions of this Final Judgment shall apply to all the defendants, the officers, agents, servants, employees, successors and assigns of each and all defendants, and to all persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise. This Final Judgment shall not apply to transactions or activities solely between a defendant manufacturer and its directors, officers, agents, servants, employees, and subsidiaries, or any of them, when acting in such capacity. This Final Judgment shall apply only to acts that affect the foreign or domestic commerce of the United States.

IV.

[*Boycott; Exchange of Information*]

- (A) Defendants and each of them are enjoined and restrained from combining or conspiring or entering into, enforcing, or claiming any rights under any agreement, arrangement, or understanding with any manufacturer of or association or group of purchasers of refrigerant gas to refuse to sell refrigerant gas to any customer or class or group of customers.
- (B) For a period of five years each defendant manufacturer is enjoined from communicating to, or discussing with, any other defendant or refrigerant gas manufacturer, the refrigerant gas distribution policies or practices of any refrigerant gas manufacturer.
- (C) For a period of five years defendant ARW is enjoined from permitting or countenancing at its meetings or in its publications any discussion regarding the distribution practices and policies of any manufacturer of refrigerant gas.

V.

[*Safety Discussions*]

Nothing herein shall prevent a defendant manufacturer from (1) announcing to the trade its own policies or practices and its terms for shipment and sale of refrigerant gas, (2) negotiating, executing, and enforcing contracts for the sale and purchase of refrigerant gas with any person, or (3) discussing with any person and implementing bona fide safety measures or standards of identification relating to refrigerant gas.

VI.

[*Required Sales/Limitations*]

(A) For a period of five years from the date of this Final Judgment each defendant manufacturer is ordered and directed to the extent it has gas and containers available to sell refrigerant gas on such defendant manufacturer's regular terms and conditions of sale, including minimum quantity requirements, to any reseller who pays cash or meets its customary credit requirements in containers of any size which it ships to any customer, provided, however, that a defendant manufacturer shall not be required to sell refrigerant gas in containers larger than 145 pounds to any reseller which is not technically qualified to use such gas to fill smaller containers. Each defendant manufacturer shall afford all resellers a fair opportunity to place orders and shall ship to any bona fide branch or warehouse of a reseller purchasing gas from it.

(B) Nothing herein shall obligate a defendant manufacturer to sell or ship refrigerant gas other than to a reseller for resale to contractors, dealers, other resellers, servicemen, and installers which are not affiliated with such reseller, and a defendant manufacturer may (1) require, as a condition of any sale or shipment, a certification from any reseller that gas that it desires to purchase will be so resold, and (2) cease selling and shipping to any reseller which deliberately or repeatedly, fails to comply with its certification.

(C) In recognition of the likelihood that a defendant manufacturer will not be in a position at all times to supply all resellers who may seek to purchase refrigerant gas, each defendant manufacturer, in carrying out its obligations under Paragraph VI of this Final Judgment, shall, in such circumstances, determine, unilaterally and without consultation with any other defendant manufacturer or any group of purchasers of refrigerant gas, the manner in which demand or anticipated demand shall be met on the basis of any allocation, reasonable and equitable under all the circumstances, which may take into account its objectives with respect to container mix. It shall be unreasonable for any such allocation plan to give preference to past or present ARW members on account of such membership. Each defendant shall maintain for three years complete records concerning sales and orders under any such allocation plan.

VII.

[*Notice; Bylaws*]

Defendant ARW is ordered and directed:

(A) Within thirty (30) days after the entry hereof, to serve by mail upon each of its present members a conformed copy of this Final Judgment;

(B) To institute forthwith and to complete within three (3) months from the date of entry of this Final Judgment such proceedings as may be appropriate and necessary to adopt Regulations or Bylaws incorporating therein the terms and requirements of Sections IV and VII of this Final Judgment and to require as a condition of membership in ARW that all present and future members be bound by said amendments hereof in the same way that the defendants are now bound;

(C) To amend its rules and regulations to create a classification of membership to include any person which regularly purchases refrigerant gas for resale and does not install or service air-conditioning or refrigeration equipment or perform air-conditioning or refrigeration repair service;

(D) To furnish to each of its present and future members a copy of its Regulations or Bylaws adopted in accordance with this Section VII;

(E) To expel promptly from its membership any present or future member who shall violate any of the provisions of this Final Judgment, when ARW shall have knowledge of such violation; and

(F) Within four (4) months after the entry hereof, to file an Affidavit with this Court and send a copy thereof to the plaintiff herein, setting forth the steps taken to comply with this Section VII.

VIII.

[*Inspections*]

(A) For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, defendants shall permit duly authorized representatives of the Department of Justice, on written request of the Attorney General or, the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants at their respective principal offices subject to any legally recognized privilege:

1. To have access during the office hours of defendants who may have counsel present, to those books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants which relate to any matters which are provided for in this Final Judgment; and
2. Subject to the reasonable convenience of defendants and without restraint or interference from it, to interview officers or employees of defendants, who may have counsel present, regarding such matters;

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

(C) No information obtained by the means provided in this Section of this Final Judgment 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 to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

IX.

[*Retention of Jurisdiction*]

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 modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

X.

[*Public Interest*]

Entry of this Judgment is in the public interest.