

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. American Hospital Supply Corp. and W. H. Curtin & Co., U.S. District Court, N.D. Texas, 1965 Trade Cases ¶71,610, (Dec. 20, 1965)

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United States v. American Hospital Supply Corp. and W. H. Curtin & Co.

1965 Trade Cases ¶71,610. U.S. District Court, N.D. Texas, Dallas Division. Civil Action No. CA 3-1018. Entered December 20, 1965. Case No. 1853 in the Antitrust Division of the Department of Justice.

Sherman and Clayton Acts

Acquiring Competitors—Hospital and Scientific Products—Consent Decree.—A distributor of hospital and scientific products was prohibited by a consent decree from acquiring the stock, assets or properties of a named distributor of such supplies, or from acquiring for five years the stock, assets or properties of any distributor of such products without giving the Justice Department 60 days' written notice.

For the plaintiff: Donald F. Turner, Assistant Attorney General, W. D. Kilgore, Jr., Gordon B. Spivack, John E. Sarbaugh, Bertram M. Long, Lawrence H. Eiger, Howard L. Fink, and Patricia M. Lines, Attorneys, Department of Justice.

For the defendant, American Hospital Supply Corp.: Charles F. Hough, Robert C. Keck, and James G. Hierung, of Spray, Price, Hough & Cushion, Chicago, Ill., Dan McElroy of Carrington, Johnson & Stephens, Dallas, Texas.

Final Judgment

HUGHES, District Judge: Plaintiff, United States of America, having filed its complaint herein on May 19, 1965; and the defendants having filed answers denying the material allegations of the complaint; American Hospital Supply Corporation (hereinafter called American), having represented to the Court that the defendants' agreement dated December 15, 1964 relating to the acquisition by defendant American of the assets and properties of defendant W. H. Curtin & Company (hereinafter called Curtin), has been terminated by mutual agreement of defendant American and defendant Curtin; American having represented that neither American nor Curtin has transferred customer accounts or employees to each other or made personnel changes or commingled nor in any way consolidated their assets, properties, and businesses; and the plaintiff and American having severally consented to the entry of this Final Judgment without any trial or adjudication of or finding on any issue of fact or law herein and without this Final Judgment constituting evidence or admission by either plaintiff or American in respect to any such issue;

Now, therefore, without any adjudication of any fact Or law herein, and without the taking of any testimony, and upon the consent as aforesaid of plaintiff and American, it is hereby

Ordered, adjudged and decreed:

I

[*Sherman and Clayton Acts*]

This Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint on its face states a claim upon which relief may be granted against American under Section 1 of the Act of Congress of July 2, 1890 (15 U. S. C. § 1) commonly known as the Sherman Act and under Section 7 of the Act of Congress of October 15, 1914 (15 U. S. C. §18) as amended, commonly known as the Clayton Act.

II

[*Applicability*]

The provisions of this Final Judgment applicable to American shall apply also to each of its subsidiaries, successors, and assigns, and to its officers, directors, agents, servants, and employees, and to all other persons acting in concert or participation with such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

III

[*Acquisition Prohibited*]

American and all persons acting on its behalf are hereby enjoined from taking any action, directly or indirectly, to purchase or acquire the stock, assets, properties, or businesses of Curtin, or from merging and consolidating such assets, properties, or businesses, or acquiring any financial or other interest in Curtin, except that nothing herein shall preclude American from purchasing or acquiring goods, wares, and merchandise in connection with a bona fide purchase or sale in the regular course of business from Curtin.

IV

[*Definitions*]

As used herein:

- (A) "Scientific instruments" means apparatus, equipment, instruments, specialized furniture and other related capital and reuseable type products used primarily in laboratories engaged in biological, chemical, agricultural, medical and physical science research, quality control and education; and
- (B) "Scientific supplies" means chemicals, disposable type items, and other consumable type products used primarily in the same kinds of scientific laboratories as "scientific instruments"; and
- (C) "Scientific products" means and embraces both scientific instruments and scientific products; and
- (D) "Scientific products distributor" means a corporation, partnership, or sole proprietorship regularly purchasing, stocking, and reselling a variety of scientific products in the United States to laboratories engaged in biological, chemical, agricultural, medical and physical science research quality control and education.

For a period of five (5) years from and after the date of entry of this Final Judgment, American and all persons acting on its behalf shall not directly or indirectly complete the purchase or acquire the stock, assets, properties, or businesses, or any part thereof (excepting purchases of goods, wares, and merchandise in connection with a bona fide purchase or sale in the regular course of business), or merge with, any scientific products distributor, or similar person engaged in the purchase, stocking, or resale of a variety of scientific products in the United States except upon sixty (60) days' prior written notice to the plaintiff, informing plaintiff as to the relevant facts of such proposed transaction.

V

[*Dissolution of Prior Order*]

The order entered in this cause on May 20, 1965 with the consent of the parties is hereby dissolved.

VI

[*Inspection and Compliance*]

For the purpose of determining and securing compliance with this Final Judgment, and for no other purposes, 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 American made to its principal office, be permitted, subject to any legally recognized privilege:

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

(B) Subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of the said defendant, who may have counsel present, regarding any such matters.

Upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, American shall submit such reports in writing with respect to the matters contained in this Final Judgment as from time to time may be necessary for the enforcement of this Final Judgment. No information obtained by the means provided for in this Section VI 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 United States 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.

VII

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification, amendment, or termination of any of the provisions thereof, and for the enforcement of compliance therewith and the punishment of violations thereof; provided, however, that in no event shall this Final Judgment be enlarged or extended so as to apply to any acquisition other than a direct or indirect acquisition by American of the stock, assets, properties, or businesses of defendant Curtin.