

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Pennsalt Chemicals Corporation; Allied Chemical Corporation; Diamond Alkali Company; Dow Chemical Company; FMC Corporation; Hooker Chemical Corporation; Olin Mathieson Chemical Corporation; Pittsburgh Plate Glass Company; and Wyandotte Chemicals Corporation., U.S. District Court, E.D. Pennsylvania, 1967 Trade Cases ¶71,982, (Jan. 13, 1967)

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United States v. Pennsalt Chemicals Corporation; Allied Chemical Corporation; Diamond Alkali Company; Dow Chemical Company; FMC Corporation; Hooker Chemical Corporation; Olin Mathieson Chemical Corporation; Pittsburgh Plate Glass Company; and Wyandotte Chemicals Corporation.

1967 Trade Cases ¶71,982. U.S. District Court, E.D. Pennsylvania. Civil Action No. 37123. Entered January 13, 1967. Case No. 1840 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing Multiple Basing Point System—Consent Judgment.—Seven of nine chemical manufacturers were prohibited under the terms of a consent judgment from engaging in price fixing activities with respect to the sale of chlor-alkali products. The judgment bars use of a multiple basing point system in which freight cost differences were equalized unless buyers are permitted to furnish transportation and take factory delivery.

For the plaintiff: Donald F. Turner, Assistant Attorney General. William D. Kilgore, Jr., Lewis Bernstein, John W. Neville, Jon D. Hartman, and Barry Costilo, Attorneys, Department of Justice.

For consenting defendants: Duane, Morris & Heckscher, Philadelphia, Pa., by John B. Martin for Allied Chemical Corp., Ballard, Spahr, Andrews & Ingersoll, Philadelphia, Pa., by Oliver C. Biddle for Diamond Alkali Co., Pepper, Hamilton & Scheetz, Philadelphia, Pa., by J. B. H. Carter for The Dow Chemical Co., Saul, Ewing, Remick & Saul, Philadelphia, Pa., by Robert W. Sayre for Hooker Chemical Corp., Schnader, Harrison, Segel & Lewis, Philadelphia, Pa., by George P. Williams, III for Olin Mathieson Chemical Corp., Dechert, Price & Rhoads, Philadelphia, Pa., by H. Francis Delone for Pennsalt Chemicals Corp., Montgomery, McCracken, Walker & Rhoads, Philadelphia, Pa., by Joseph W. Swain, Jr., for Wyandotte Chemicals Corp.

Final Judgment

A. LEON HIGGINBOTHAM, Jr., D. J.: Plaintiff United States of America, having filed its complaint herein on December 24, 1964, and defendants Pennsalt Chemicals Corporation, Allied Chemical Corporation, Diamond Alkali Company, The Dow Chemical Company, Hooker Chemical Corporation, Olin Mathieson Chemical Corporation and Wyandotte Chemicals Corporation having appeared and filed their answers to the said complaint, denying the substantive allegations thereof, and plaintiff and said defendants by their attorneys, having respectively consented to the entry of this Final Judgment pursuant to a stipulation entered into December 7, 1966 without trial or adjudication of any issue of fact or law herein, without this Final Judgment constituting evidence against or an admission by said defendants, and this Court, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, having determined that there is no just reason for delay in entering a Final Judgment as to all of plaintiff's claims asserted in said complaint against said defendants and having directed the entry of such a Final Judgment;

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:

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I

This Court has jurisdiction of the subject matter herein and of the parties consenting hereto. The complaint herein states claims for relief against defendants Pennsalt Chemicals Corporation, Allied Chemical Corporation, Diamond Alkali Company, The Dow Chemical Company, Hooker Chemical Corporation, Olin Mathieson Chemical Corporation and Wyandotte Chemicals Corporation 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.

II

As used in this Final Judgment:

- (A) "Consenting Defendant" shall mean Pennsalt Chemicals Corporation, Allied Chemical Corporation, Diamond Alkali Company, The Dow Chemical Company, Hooker Chemical Corporation, Olin Mathieson Chemical Corporation and Wyandotte Chemicals Corporation, or each of them;
- (B) "Person" shall mean any individual, partnership, firm, corporation, association, or other business or legal entity;
- (C) "Chlor-Alkali Products" shall mean all forms of chlorine, caustic soda, and soda ash, as such, or any of them; and
- (D) "Manufacturer" shall mean a Person who, within the United States, produces Chlor-Alkali Products and regularly solicits customers for the sale of such Products.

III

The provisions of this Final Judgment shall apply in the United States and to Consenting Defendant, each of its officers, directors, employees, agents, subsidiaries, successors and assigns, and all Persons in active concert or participation with Consenting Defendant who receive actual notice of this Final Judgment by personal service or otherwise. Each Consenting Defendant and its officers, directors, employees, subsidiaries, successors and assigns shall be regarded as one Person for the purposes hereof.

IV

Consenting Defendant is enjoined and restrained from directly or indirectly entering into, adhering to, or claiming any right under any conspiracy, contract, agreement, arrangement or understanding:

- (A) With any other Manufacturer or seller of Chlor-Alkali Products to fix or maintain prices, terms or conditions for the sale of such Products to any third Person; or
- (B) With any other Manufacturer to:
 - 1 Unreasonably eliminate or restrain competition in the manufacture, distribution or sale of such Products; or
 2. Maintain, use or operate a freight equalized multiple basing point system or any other pricing system in the sale of such Products to any third Person; or
 3. Swap or exchange such Products for the purpose of allocating customers or territories or fixing prices.

V

Consenting Defendant is enjoined and restrained from directly or indirectly:

- (A) Communicating, relaying or reporting to any Manufacturer information concerning or relating to prices, terms, or conditions of sale (including transportation rates, charges or routing information) at or upon which Chlor-Alkali Products sold by said Consenting Defendant are being sold or will be sold to any third Person by Consenting Defendant or by any other Manufacturer or reseller of Chlor-Alkali Products, other than such information which

has been previously or is simultaneously released to the trade generally or has been disclosed by any Person who is not competing with Consenting Defendant in the sale of such Chlor-Alkali Products.

(B) Announcing any change in prices, terms, or conditions of sale (including transportation rates, charges or routing information) at or upon which Chlor-Alkali Products are to be sold by Consenting Defendant prior to the effective date thereof, *provided that* any announced change by Consenting Defendant need not become effective as to any contract customer except in accordance with the provisions of any contract between Consenting Defendant and such customer.

(C) Participating in any activities of the Advisory Committee of the Chlorine Institute, Inc.

(D) Joining, belonging to, continuing to be a member of, or participating in any of the activities of the Chlorine Institute, Inc., or any other trade association, other organization or industry group with knowledge that any of the activities of such association, organization or group are being carried on in a manner which, if such association, organization or group were a party hereto, would violate any of the terms of this Final Judgment.

(E) For a period of five (5) years from the date of entry of this Final Judgment, submitting any bid or quotation of "book" or list price with freight equalization adjustment to point of delivery, in response to an invitation for sealed bids covering Chlor-Alkali Products received from any agency or corporation of the Federal, or any State or local, government.

(F)(1) Adopting, maintaining or using any pricing system having an f. o. b. factory price with freight equalization adjustment unless Consenting Defendant's terms of sale shall offer the customer the option to purchase Chlor-Alkali Products at the factory, in not less than minimum quantities established in good faith by Consenting Defendant, at not more than its f. o. b. factory price, when the customer furnishes its own or arranges for a lawful means of transportation compatible with loading facilities and schedules of Consenting Defendant and meeting reasonable safety and maintenance standards;

(2) For a period of five (5) years from the date of entry of this Final Judgment, adopting, maintaining or using any other pricing system unless Consenting Defendant's terms of sale shall offer the customer the option to purchase Chlor-Alkali Products at the factory, in not less than minimum quantities established in good faith by Consenting Defendant, at not more than its f. o. b. factory price, when the customer furnishes its own or arranges for a lawful means of transportation compatible with loading facilities and schedules of Consenting Defendant and meeting reasonable safety and maintenance standards;

provided, however, that this Subsection (F) shall not apply to sales of chlorine purchased in containers having a capacity of not more than 150 pounds.

VI

(A) Within ninety (90) days following the entry of this Final Judgment, Consenting Defendant independently and unilaterally shall review its prices, price lists, terms and conditions of sale (including freight equalization) for Chlor-Alkali Products, and at 3:00 p.m. Eastern Standard Time on the ninetieth (90th) day of such time period shall announce its prices, price lists, terms and conditions (including freight equalization) for the sale of Chlor-Alkali Products effective as of such time.

(B) Within three (3) months thereafter, upon petition of plaintiff to the Court setting forth sufficient cause, the Court may ask Consenting Defendant to show how the prices announced pursuant to Subsection (A) of this Section VI have been arrived at. The Court may enter such additional order as it deems appropriate to effectuate compliance with Subsection A of this Section VI.

(C) For the period of four (4) years following the announcement required by Subsection (A) of this Section VI, Consenting Defendant shall retain in its files any records relied upon in adopting such prices, terms or conditions of sale.

VII

Consenting Defendant, for a period of five (5) years from and after the date of entry of this Final Judgment, is ordered to make a record of each telephone call or meeting, formal or informal, which is attended by or is participated in by any officer or employee of Consenting Defendant having policy making authority with respect to pricing or principal supervisory responsibility with respect to sales of Chlor-Alkali Products by Consenting Defendant and any officer or employee of any other Manufacturer having similar authority or responsibility at or in which (1) the principal individuals present or participating are employed by Manufacturers and (2) prices, terms, or conditions of sale or transportation rates or charges for Chlor-Alkali Products are discussed. Such record shall show (a) the date, time and place of the meeting or telephone call dealt with therein; (b) the individuals employed by Manufacturers of Chlor-Alkali Products present at or participating in such meeting or telephone call; and (c) a listing of such topics discussed at such meeting or during such telephone call. The record shall be maintained by Consenting Defendant in its files until six (6) years shall have elapsed from the date of preparation of such record. Notwithstanding Section II (D) herein, "Manufacturer" for the purpose of this Section VII shall mean the defendants herein and any other Person who, within the United States, produces Chlor-Alkali Products and regularly solicits customers for the sale of such Products, provided that said Person shall be deemed a Manufacturer only with respect to the Chlor-Alkali Product or Products which it so produces and sells.

VIII

Nothing contained in this Final Judgment shall be deemed to enjoin or restrain Consenting Defendant from:

- (A) Negotiating for, entering into, or carrying out a bona fide sale to, or purchase from, any Person of Chlor-Alkali Products by Consenting Defendant, or communicating, relaying or reporting information to such Person, or taking any lawful action, in connection with negotiating for, entering into or carrying out such sale or purchase;
- (B) Furnishing to any trade association, other organization or industry group, information in connection with any otherwise lawful project, study, analysis, survey, or the like; *provided* that any such information is furnished upon the condition that it be held in confidence and not be made known or available to any other Person except as part of a composite containing other similar information.

IX

- (A) For the purpose of determining or securing compliance with this Final Judgment, 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 Consenting Defendant made to its principal offices, be permitted, subject to any legally recognized privilege:
 - (1) Reasonable access, during office hours of Consenting Defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in its possession or under its control relating to any matters contained in this Final Judgment; and
 - (2) Subject to the reasonable convenience of Consenting Defendant, to interview its officers or employees, who may have counsel present, regarding any such matters.
- (B) Upon such written request Consenting Defendant shall submit reports in writing with respect to any of the matters contained in the Final Judgment.
- (C) No information obtained by the means provided in this Section shall be divulged by any representative of the Department of Justice to anyone other than a duly authorized representative of the Executive Branch of plaintiff herein, 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.

X

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply at any time to this Court for such further orders and directions as may be necessary or appropriate for the

construction or carrying out 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.