

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Combustion Engineering, Inc. and American Colloid Co., U.S. District Court, E.D. Pennsylvania, 1974-2 Trade Cases ¶75,316, (Dec. 3, 1974)

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United States v. Combustion Engineering, Inc. and American Colloid Co.

1974-2 Trade Cases ¶75,316. U.S. District Court, E.D. Pennsylvania. Civil No. 73-2500. Entered December 3, 1974. Case No. 2349, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing—Customer and Territorial Allocation—Chromite Sand—Consent Decree.—Two importers, processors, and sellers of chromite sand were prohibited by a consent decree from agreeing to fix prices or allocate customers or territories.

For plaintiff: Robert H. Bork, Actg. Atty. Gen., Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, John J. Hughes, Warren Marcus, William A. DeStefano, Stewart J. Miller, Attys., Dept. of Justice, Antitrust Div., Philadelphia, Pa., and Robert E. J. Curran, U. S. Atty.

For defendants: Seymour D. Lewis, of Rosenman, Colin, Kaye, Petschek, Freund & Emil, for Combustion Engineering, Inc.; Richard L. Reinish, of Price, Cushman, Keck, Mahin & Cate, for American Colloid Co.

Final Judgment

FOGEL, D. J.: Plaintiff, United States of America, having filed its Complaint herein on November 2, 1973, the defendants having appeared herein, and the parties, by their respective attorneys, having each 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 evidence or admission by any party with respect to any such issue;

Now, Therefore, before any testimony has been taken herein 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 the action and of each of the parties hereto, and the Complaint states claims upon which relief may be granted 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,” commonly known as the Sherman Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

(A) “Chromite sand” means a naturally occurring sand derived from chrome ore deposits which, after processing, is primarily used as a molding medium or a core-making medium in the production of metal castings and means such sand in either its processed or unprocessed state;

(B) “Person” means any individual, partnership, firm, corporation, association or other business or legal entity.

III

[*Applicability*]

The provisions of this Final Judgment applicable to either defendant shall also apply to its subsidiaries, successors, assigns, officers, directors, agents and employees and to all other persons in active concert or participation with it who receive actual notice of this Final Judgment by personal service or otherwise. The provisions of this Final Judgment shall not apply to any activities between a defendant and a parent or subsidiary thereof.

IV

[*Price Fixing/Allocation*]

Defendants are jointly and severally enjoined and restrained from, directly or indirectly, entering into, adhering to, maintaining, or furthering any contract, agreement, understanding, plan or program with each other or with any producer, processor, manufacturer or importer of chromite sand:

- (A) To fix, raise, maintain, or stabilize prices or other terms or conditions for the sale of chromite sand to any third person;
- (B) To divide, allocate or apportion customers for chromite sand, or to refrain from soliciting any such customer; or
- (C) To divide, allocate or apportion territories for the production or sale of chromite sand.

V

[*Notice*]

Within ninety (90) days after the entry of this Final Judgment, each defendant shall furnish a copy thereof to its officers, directors and employees having managerial or supervisory authority in the sale or pricing of chromite sand.

VI

[*Reports*]

For a period of five (5) years from the date of entry of this Final Judgment each defendant is ordered to file with the Assistant Attorney General in charge of the Antitrust Division, Washington, D. C., within thirty (30) days of each anniversary date of this Final Judgment, a report setting forth the steps it has taken during the prior year to carry out the terms thereof and to advise the defendant's officers, directors, and employees having managerial or supervisory authority in the sale or pricing of chromite sand of its and their obligations under this Final Judgment.

VII

[*Inspection*]

For the purpose of determining or 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 Antitrust Division, and on reasonable notice to either defendant, made to its principal office, be permitted, subject to any legally recognized privilege and subject to the presence of that defendant's counsel if so desired:

- (A) Access, during office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant relating to any matters contained in this Final Judgment;
- (B) Subject to the reasonable convenience of such defendant, and without restraint or interference from it, to interview officers, directors, employees or agents of such 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, such 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.

No information obtained by the means provided in this Section VII 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.

VIII

[*Retention of Jurisdiction*]

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 or for the modification of any of the provisions thereof and for the enforcement of compliance therewith and for the punishment of any violation thereof.