

# Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Foote Mineral Co. and Metallgesellschaft, A. G., U.S. District Court, E.D. Pennsylvania, 1976-1 Trade Cases ¶60,836, (Mar. 16, 1976)

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United States v. Foote Mineral Co. and Metallgesellschaft, A. G.

1976-1 Trade Cases ¶60,836. U.S. District Court, E.D. Pennsylvania. Civil No. 74-1652. Entered March 16, 1976. (Competitive impact statement and other matters filed with settlement: 40 *Federal Register* 59357). Case No. 2396, Antitrust Division, Department of Justice.

## Sherman Act

**Allocation of Customers and Territories—United States Lithium Producer and German Agent—Dissolution of Agency—Consent Decree.**—A United States producer of lithium and its German agent were prohibited by a consent decree from allocating customers or territories and the agency relationship was ordered dissolved for a period of three years.

**For plaintiff:** Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, Joel Davidow, Charles F. B. McAleer, C. Forrest Bannan, William J. Kananack, and Stephen F. Sonnett, Attys., Antitrust Div., Dept. of Justice

**For defendants:** Oliver C. Biddle, of Ballard, Spahr, Andrews & Ingersoll, for Foote Mineral Co.; Jack Lipson and Werner Kronstein, of Arnold & Porter, for Metallgesellschaft, A. G.

## Final Judgment

HIGGENBOTHAM, D. J.: Plaintiff, United States of America, having filed its complaint herein on June 28, 1974, and the defendants having filed their answers thereto denying the material allegations of the complaint and plaintiff and defendants, 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 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, and upon consent of the parties hereto it is hereby

Ordered, Adjudged and Decreed as Follows:

### I.

#### [ Jurisdiction]

This Court has jurisdiction of the subject matter hereof and of the parties consenting hereto. The complaint states a claim 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 (15 U. S. C. §1).

### II.

#### [ Public Interest]

Entry of this Judgment is in the public interest.

### III

#### [ Definitions]

As used in this Final Judgment:

- (A) "Foote" shall mean the defendant Foote Mineral Company, a corporation organized and existing under the laws of the State of Pennsylvania;
- (B) "Metall" shall mean the defendant Metallgesellschaft, A. G., a limited liability corporation presently headquartered in Frankfurt am Main, Federal Republic of Germany (West Germany);
- (C) "Person" shall mean any individual, partnership, firm, corporation, association or other business or legal entity;
- (D) "Lithium" shall mean (1) lithium ores and concentrates, (2) lithium metal, (3) lithium chemicals and compounds;
- (E) "United States trade in lithium" shall mean activities which directly or indirectly affect sales within, exports from or imports to the United States of lithium;
- (F) "Manufacture" shall mean the recovery of lithium by extraction, evaporation or otherwise; and/or the refining and/or processing of lithium;
- (G) "Agency" shall mean any relationship in which one defendant directly or indirectly acts to purchase or sell lithium products for the other.

#### IV.

##### [ *Applicability* ]

The provisions of this Final Judgment shall apply to defendants and to each of their respective directors, officers, agents, employees, subsidiaries, successors and assigns, 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 apply only to acts which affect United States trade in lithium.

#### V.

##### [ *Allocation* ]

The defendants are each enjoined and restrained from directly or indirectly in any manner entering into, adhering to, enforcing, claiming any rights under or in any other way maintaining, any contract, agreement or understanding with each other or with any other person to allocate, divide, or restrict customers, territories, or markets for the manufacture, sale or use of lithium,

#### VI.

##### [ *Payments* ]

The defendants are each enjoined and restrained from directly or indirectly paying to or receiving from the other defendant any payment in any form the purpose or effect of which is or may tend to allocate, divide, or restrict territories, customers or markets for any sale of lithium. Nothing contained herein shall prohibit Foote, without more, pursuant to formulae contained in the Supply Agreements dated June 19, 1964, and December 13, 1966, from reducing the contract price of the lithium covered by those contracts to Metall if Foote makes direct sales of such lithium to Europe.

#### VII.

##### [ *Termination of Agency* ]

Defendants are ordered, within ninety (90) days from the date of entry of this Final Judgment, to cancel the following provisions of the existing contracts between them:

- (A) the entire Agency Agreement dated June 19, 1964, between Metall and Foote;
- (B) the entire Agency Agreement executed December 13, 1966, between Foote and Metall;

(C) paragraphs 7(b) and 7(d) and the phrase “or is in fact shipped to Europe” contained in paragraph 7(c) of the Supply Agreement dated June 19, 1964, between Foote and Metall; and

(D) paragraphs 6(c) and 6(e) and the phrase “or is in fact shipped to Europe” contained in paragraph 6(d) of the Supply Agreement dated December 13, 1966, between Foote and Metall.

#### VIII.

##### [ *Agency Agreements* ]

For a, period of three (3) years from the date of entry of this Final Judgment, defendants are enjoined and restrained from directly or indirectly acting in an agency relationship for each other. Defendants may enter into new agency agreements with each other upon the expiration of this period with the consent of the plaintiff, or upon a showing to the satisfaction of this Court that such agency will not lessen competition or tend to create a monopoly.

#### IX.

##### [ *Inspection* ]

(A) For the purpose of securing or determining compliance with this Final Judgment with regard to Defendant Foote and for no other purpose, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, or his agent, and on reasonable notice to the defendant at its principal place of business and subject to any legally recognized privilege: (i) duly authorized representatives of the Department of Justice shall be permitted access at defendant's place of business in the United States during the regular business hours of the defendant, 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 the defendant which relate to any matters contained in this Final Judgment; (ii) duly authorized representatives of the Department of Justice shall be permitted, subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding such matters; and (iii)

defendant Foote shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may, from time to time, be requested.

(B) For the purpose of securing or determining compliance with this Final Judgment with regard to Defendant Metall and for no other purpose, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, or his agent, and on reasonable notice to defendant at either its principal business office in Frankfurt Am Main, West Germany or any successor location, and subject to any legally recognized privilege: (i) within 60 days of receipt of a request for books, ledgers, accounts, correspondence, memoranda, and other records in the possession or under the control of defendant, defendant shall provide duly authenticated copies of such documents at the Department of Justice in Washington, D. C.; and (ii) defendant Metall shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may, from time to time, be requested; provided, however, as to both (i) and (ii) of this subparagraph that defendant shall not be required to bring to the United States or to disclose the content of any books or other records or copies thereof, or other information, when such action is prohibited by the laws of West Germany or of any country or treaty organization with jurisdiction over defendant and defendant has exercised good faith efforts to obtain permission of the appropriate authorities but such permission has not been secured. Defendant shall promptly notify Plaintiff of any change of address of its principal business office.

No information obtained by the means provided in this section shall be divulged by any representatives 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 in which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

#### X.

[ *Retention of Jurisdiction*]

Jurisdiction is retained by this Court for the purpose of enabling any of the parties consenting 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 modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of any violations hereof.