

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Swift Instruments, Inc., U.S. District Court, N.D. California, 1973-2 Trade Cases ¶74,762, (Dec. 11, 1973)

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United States v. Swift Instruments, Inc.

1973-2 Trade Cases ¶74,762. U.S. District Court, N.D. California. Civil No. C-73-0300 CBR. Entered December 11, 1973. Case No. 2309, Antitrust Division, Department of Justice.

Sherman Act

Resale Price Fixing—Customers and Territories—Bids to Educational Institutions— Microscopes— Consent Decree.—A microscope manufacturer was prohibited by a consent decree from suggesting, urging or requiring any dealer: (1) to adopt or adhere to any fixed, suggested or specified price, discount or markup in the sale of microscopes; (2) to modify or withdraw its bid to any educational institution or other public agency because of the price or discount at which the dealer bid microscopes; and (3) to establish, adopt or adhere to any limit on the classes of customers to whom, or the territory in which such dealer may bid or sell microscopes. Additionally, the decree prohibits the firm from terminating or threatening to terminate, discontinuing or limiting the sale of microscopes to, or otherwise penalizing any dealer because of the prices at which or the persons to whom the dealer sells or offers to sell, or the territories in which the dealer operates.

For plaintiff: Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, Charles F. B. McAleer, Anthony L. Desmond, Gary R. Spratling and Robert J. Ludwig, Attys., Dept. of Justice.

For defendant: George A. Sears and Roland W. Selman, of Pillsbury, Madison & Sutro, San Francisco, Cal.

Final Judgment

WOLLENBERG, D. J.: Plaintiff, United States of America, having filed its complaint herein on February 26, 1973; defendant, Swift Instruments, Inc., having appeared by its counsel; and plaintiff and defendant, by their respective attorneys, each 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 evidence or an admission by any party consenting hereto with respect to any such issue,

Now, Therefore, before any testimony or evidence has been taken herein, and with out 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*]

The Court has jurisdiction of the subject matter hereof and the parties hereto. The complaint states a claim upon which relief may be granted against defendant under Section 1 of the Act of Congress of July 2, 1890 (as amended), commonly known as the Sherman Act (15 U. S. C. § 1).

II

[*Definitions*]

As used in this Final Judgment:

- (A) "Person" shall mean any individual, partnership, firm, corporation or other business or legal entity;
- (B) "Swift" shall mean the defendant Swift Instruments, Inc.;

- (C) "Dealer" shall mean a person engaged in the purchase of microscopes from Swift for resale; and
- (D) "Microscopes" shall mean microscopes and microscope parts and accessories, including lenses.

III

[*Applicability*]

The provisions of this Final Judgment applicable to Swift shall also apply to each of its officers, directors, agents, employees, subsidiaries, successors and assigns, and all persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. The provisions of this Final Judgment shall apply to sales of defendant's microscopes in the United States.

IV

[*Prices, Territories, Customers*]

Swift is enjoined and restrained from entering into, adhering to, maintaining, enforcing, or claiming, directly or indirectly, any rights under any contract, agreement, combination, understanding, plan or program with any dealer to:

- (A) Fix, establish, maintain or adhere to prices or discounts at which microscopes are bid, sold, offered for sale, or advertised by any such dealer; and
- (B) Limit or restrict the sales territories within which, or the persons to whom dealers may bid, sell, offer for sale or advertise microscopes.

V

Swift is enjoined and restrained from:

- (A) Suggesting, urging, compelling or requiring any dealer to establish, maintain, adopt, advertise or adhere to any fixed, suggested or specified price, discount, markup or margin of profit in the sale of microscopes ;
- (B) Encouraging the report of, or taking action in response to any complaint by dealers regarding bidding or selling at discounted prices in connection with the sale of Swift microscopes by any other dealer;
- (C) Suggesting, urging, compelling or requiring any dealer to establish, maintain, adopt, adhere to or enforce adherence to any limit on the classes of customers to whom, or the territory in which, such dealer may bid, sell, offer to sell or advertise microscopes;
- (D) Suggesting, urging, compelling or requiring any dealer to modify or withdraw its bid to any educational institution or other public agency because of the price or discount at which said dealer bid microscopes;
- (E) Terminating or threatening to terminate the dealer sales agreement of any dealer because of the prices at which, the persons or classes of persons to whom, or the markets or territories in which such dealer has bid, sold or offered to sell Swift microscopes; and
- (F) Discontinuing, curtailing or limiting the sale of microscopes to, or otherwise penalizing any dealer because of the prices at which, the persons or classes of persons to whom, or the markets or territories in which such dealer has bid, sold or offered to sell Swift microscopes.

VI

[*Suggested Prices; Fair Trade*]

(A) Nothing in this Final Judgment shall prohibit Swift from unilaterally suggesting retail prices, markups or margin of profit to dealers for the sale of microscopes; provided, however, that the page (or the first page of a multipage document) containing such a suggestion shall include a statement that each dealer is free to sell at whatever prices, markups or margins of profit he may choose.

(B) Nothing in this Final Judgment shall be deemed to prohibit Swift from availing itself of rights it may have under the Miller-Tydings Act and the McGuire Act.

VII

[*Contracts*]

(A) Swift is ordered and directed, within ninety (90) days after the date of entry of this Final Judgment, to revise any portion of its contracts and agreements with dealers which are inconsistent with any provision of this Final Judgment.

(B) Swift is ordered and directed, within ninety (90) days after entry of this Final Judgment, to notify each such dealer in writing, in a form acceptable to plaintiff, that he may sell Swift products at such prices as, and to whomsoever and wherever he may please.

(C) Swift is ordered and directed, for a period of ten (10) years after entry of this Final Judgment, to deliver to each new dealer with whom Swift commences business relations a notice in writing in the same form as that approved for use pursuant to subsection VII(B) above within thirty (30) days after commencing such business relations.

(D) Swift is ordered and directed, within ninety (90) days after the entry of this Final Judgment, to serve a copy of this Final Judgment upon each of Swift's officers, directors and each of its employees or representatives who has responsibility for the sale of Swift products, and to advise each such person that violation by him of this Final Judgment could result in a conviction for contempt of court and could subject him to imprisonment and/or fine.

(E) Swift is ordered and directed, for a period of ten (10) years after entry of this Final Judgment, to serve a copy of this Final Judgment upon each successor to those officers, directors and supervisory employees of Swift described in subsection (D) of this section VII, within thirty (30) days after each successor is employed by or becomes associated with Swift.

(F) Swift is ordered and directed, within one hundred and twenty (120) days after the entry of this Final Judgment to serve upon plaintiff affidavits concerning the fact and manner of compliance with subsections (B) and (D) of this section VII.

VIII

[*Reports*]

For a period of ten (10) years from the date of the entry of this Final Judgment, Swift is ordered to file with the plaintiff, on each anniversary date of such entry, a report setting forth the steps which Swift has taken during the prior year to advise Swift's appropriate officers, directors and employees of their obligations under this Final Judgment. Such report shall further contain the name and address of any dealer whose dealership was terminated by Swift and state the reasons for such termination.

IX

[*Inspection and Compliance*]

For the purpose of determining or securing compliance with this Final Judgment, authorized representatives of the Department of Justice, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, subject to reasonable notice to Swift and applicable legal privilege, shall be permitted:

(A) To examine the books, ledgers, accounts, correspondence, memoranda and other records in the possession or under the control of Swift relating to matters in this Final Judgment; and

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

Upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, Swift shall submit written reports relating to matters in this Final Judgment as may from time to time be requested.

No information obtained pursuant to this paragraph IX shall be divulged by any representative of the Department of Justice to any person other than another authorized representative of the Executive Branch, except in the course of legal proceedings to secure compliance with this Final Judgment, or as otherwise required by law.

X

[*Retention of Jurisdiction*]

Jurisdiction is retained for the purpose of enabling each party 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, carrying out or modification of provisions thereof, and for the enforcement of compliance therewith and for the punishment of violations thereof.