

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. (California Chemical Company), (J. R. Simplot Company), (Cominco Products, Inc)., U.S. District Court, S.D. California, 1965 Trade Cases ¶71,510, (Aug. 23, 1965)

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United States v. (California Chemical Company), (J. R. Simplot Company), (Cominco Products, Inc).
1965 Trade Cases ¶71,510. U.S. District Court, S.D. California, Central Division. Civil No. 64-873-S. Entered August 23, 1965. Case No. 1814 in the Antitrust Division of the Department of Justice.

Sherman Act

Price-Fixing—Fertilizer—Consent Judgment.—Producers of phosphatic fertilizer were prohibited by a consent judgment from entering into any agreement to fix the price of phosphatic fertilizer in specified states. They were also required to review their published prices in view of lawful factors and republish them accordingly.

For the plaintiff: Donald F. Turner, Assistant Attorney General, Lewis Bernstein, W. D. Kilgore, Jr., Stanley E. Disney, Charles R. Esherick, Joseph H. Widmar, Albert P. Lindemann, Jr., and Malcolm F. Knight, Attorneys, Department of Justice.

For the defendant: Carl J. Schuck of Overton, Lyman & Prince, Philip K. Verleger, G. Richard Doty and Kenneth E. Owen of McCutchen, Black, Verleger & Shea, Reed A. Stout and Marcus Mattson of Lawler, Felix & Hall, and Francis R. Kirkham and William E. Mussman of Pillsbury, Madison & Sutro.

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on June 30, 1964, and defendants having filed answers thereto denying the allegations thereof, and the plaintiff and the consenting defendants, by their respective attorneys, having severally consented to the entry of this Final Judgment herein, 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 with respect to any such issue;

Now, Therefore, before the taking of any testimony herein, and without trial or adjudication of any issues of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows;

I

This Court has jurisdiction of the subject matter of this action and of the defendants consenting hereto. The complaint states a claim upon which relief may be granted against those 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

As used herein:

- (a) "Phosphatic fertilizer" means any dry fertilizer material containing phosphate;
- (b) "Producer of phosphatic fertilizer" means a manufacturer of the phosphatic component of such fertilizer and does not include anyone who mixes phosphatic materials already manufactured with other ingredients.

III

The provisions of this Final Judgment applicable to any consenting defendant shall apply to each of its subsidiaries, successors, and assignees, and to their respective officers, directors, agents, servants, and employees, and to all other persons in active concert or participation with any such defendant who receive actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment the defendant and its officers, directors, agents, employees, parents and subsidiaries, when acting as such, shall be deemed to be one person.

IV

Each consenting defendant is enjoined and restrained from entering into or participating in any discussion, agreement, contract, understanding, plan or program with any other producer of phosphatic fertilizer which has the purpose or effect of changing, fixing, maintaining or establishing the prices, terms or conditions at which, or the class or identity of customers to whom, phosphatic fertilizer is to be sold to any third person (whether a natural person, a corporation or other legal entity) in the States of Washington, Oregon, California, Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah and Nevada.

V

Within sixty (60) days of the entry of this Final Judgment, each consenting defendant is ordered and directed individually and independently and without consultation, discussion, advice, or any other communication with any other defendant, with respect to sales of phosphatic fertilizer in the states of Washington, Oregon, California, Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah and Nevada:

- (a) To review its published prices and other terms and conditions for sale of phosphatic fertilizer considering its own costs, profits, losses, and any other lawful factors; and
- (b) To withdraw its current price lists for sales of phosphatic fertilizer and to adopt and publish price lists including terms and conditions arrived at pursuant to subsection (a) above;

provided, however, that if any defendant shall have so reviewed, adopted and published its price lists at any time since June 30, 1964, and is otherwise in compliance with this section, no further compliance with the provisions of this paragraph V shall be necessary.

VI

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 any consenting defendant made to its principal office, be permitted, subject to any legally recognized privilege:

- (a) Access during the office hours of such defendant, to books, ledgers, accounts, correspondence, memoranda, and other records and documents of such defendant relating to any of the subject matters contained in this Final Judgment; and
- (b) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers or employees of said defendant, who may have counsel present, regarding any such matters.

Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, said defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to 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 to any person except 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 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 or 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 thereof, and for the enforcement of compliance therewith and the punishment of violations thereof.