

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Norris Industries, Inc., U.S. District Court, C.D. California, 1975-1 Trade Cases ¶60,163, (May 5, 1975)

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United States v. Norris Industries, Inc.

1975-1 Trade Cases ¶60,163. U.S. District Court, C.D. California. Civil Action No. 73-1036 WPG. Entered May 5, 1975. Competitive impact statement and other matters filed with settlement: 40 *Federal Register* 7688, 18473). Case No. 2321, Antitrust Division, Department of Justice.

Clayton Act

Acquisitions—Pressed Gas Cylinders—Partial Divestiture Within Time Limits—Furnishing of Know-How—Consent Decree.—A manufacturer of pressed gas cylinders was required by a consent decree to divest either the larger of two acquired plants within 18 months, or both plants within 3 years. If the one plant is divested, the purchaser must be furnished with technology and know-how for the production of industrial cylinders, a product line not manufactured in the larger plant, although the manufacturer retains patent rights and proprietary interest in such technical data. If the required divestiture is not completed within 3 years, a trustee is to be appointed to carry it out. Additionally, there is a 10-year ban, without the approval of the Justice Department, on the acquisition of any compressed gas cylinder producer.

For plaintiff: Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, Charles F. B. McAleer, Hugh Morrison, Frank Bentkover, Robert J. Ludwig, and Ronald J. Silverman, Attys., Antitrust Div., Dept. of Justice, Washington, D. C., Raymond P. Hernacki, Jonathan C. Gordon, and James J. Coyle, Antitrust Div., Dept. of Justice, Los Angeles, Cal. **For defendant:** R. James Shaffer, of Norris Industries, Inc. and Henry P. Sailer, of Covington & Burling.

Final Judgment

GRAY, D. J.: Plaintiff, United States of America, having filed its complaint herein on May 9, 1973, and its amended complaint herein on June 25, 1974, and defendant Norris Industries having appeared by its attorneys and having filed its answers to said complaint and amended complaint, and plaintiff and defendant, 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 evidence or admission by any party with respect to any issue of fact or law herein;

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

I.

[*Jurisdiction*]

This Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint states a claim upon which relief may be granted under Section 7 of the Act of Congress of October 15, 1914, as amended, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes, " commonly known as the Clayton Act.

II.

[*Definitions*]

As used in this Final Judgment:

(A) "Norris " means defendant Norris Industries, Inc.;

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(B) "PST " means Pressed Steel Tank Company, Inc., and any person owned or controlled directly or indirectly by Norris that in connection with the divestiture of PST Plant 1 succeeds to the business or assets of PST other than PST Plant 1;

(C) "PST Plant 1 " means all real and personal property (except for accounts receivable on conditional sales contracts and leases), business, manufacturing and shipping facilities and operations of PST located at 1445 South 66th Street, Milwaukee, Wisconsin, and related to the manufacture and sale of the products there manufactured; all technical data owned or controlled by PST relating to the manufacture and sale of any product manufactured by PST Plant 1 on the date of completion of the divestiture ordered by subsection (A), Section IV of this Final Judgment; and the names Pressed Steel Tank Company, Inc., PST and all other trade names and trademarks owned or controlled by PST on the date of completion of the divestiture ordered by Section IV(A) of this Final Judgment, except any such names that (a) do not relate to the sale of any product manufactured by PST Plant 1 on the date of completion of such divestiture, and (b) have not been utilized by PST in the sale of high pressure compressed gas cylinders more than ninety (90) days prior to the expiration of plaintiff's right to object to a proposed plan for such divestiture or the Court's consent to such a proposed plan pursuant to Section IV(C) of this Final Judgment;

(D) "Person " means any individual, corporation, partnership, association, firm or other legal entity;

(E) "High-pressure compressed gas cylinders " means seamless, one-piece compressed gas cylinders made according to Department of Transportation standards which hold compressed and liquefiable gases at service pressures of 900 pounds per square inch ("p.s.i. "), and above and includes carbon dioxide cylinders, round bottom cylinders, and industrial cylinders;

(F) "Industrial cylinders " means high-pressure compressed gas cylinders, excluding round-bottom cylinders, made for service pressures of 2000 p.s.i. and above and with capacities of 650 cubic inches to 4100 cubic inches;

(G) "Carbon dioxide cylinders " means high-pressure compressed gas cylinders made to hold carbon dioxide at a service pressure of 1800 p.s.i. and with capacities of 2400 cubic inches or less;

(H) "Round-bottom cylinders " means high-pressure compressed gas cylinders with rounded or ellipsoidal bottoms, made for service pressures of 1800 p.s.i. and above and with capacities of less than 1600 cubic inches;

(I) "Acetylene cylinder shells " means empty cylindrical metal containers or their components which are used in making acetylene cylinders;

(J) "Acetylene cylinders " means acetylene cylinder shells containing a porous filler and acetone;

(K) "Accumulator shells " means pressure vessels used in making high-pressure bladder type accumulators (those with operating pressures of 1000 p.s.i. and above);

(L) "Technical data " means all written know-how, technology, production manuals, drawings, patents and patent applications of PST; and

(M) "PST technical data " means all know-how, technology, drawings, patents and patent applications of PST relating to the manufacture of industrial cylinders by PST other than at Plant 1 on the effective date of this Final Judgment existing in writing on that date, and one or more production manuals describing the equipment and processes used by PST in such manufacture on that date.

III.

[*Applicability*]

The provisions of this Final Judgment applicable to Norris shall apply also to each of its subsidiaries, successors and assigns, and their officers, directors, agents and employees and to those persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise. The provisions of this Final Judgment shall not apply to any person who acquires any of the assets divested pursuant to such Final Judgment.

IV.

[Divestiture]

(A) Norris is ordered and directed to divest all of its interest, direct and indirect, in either

- (1) PST Plant 1 within eighteen months from the date of entry of this Final Judgment; or
- (2) PST within three years from the date of entry of this Final Judgment.

Said divestiture shall not be made by means of an exchange offer or distribution to Norris shareholders.

(B) The divestiture ordered by this Final Judgment shall be of a single viable, going business, and Norris shall not take any action, including but not limited to the disposition of any assets of PST, which would impair or impede such viability or Norris' ability to accomplish such divestiture.

(C) Norris shall submit in writing to plaintiff the complete details of any proposed divestiture plan intended to implement the provisions of subsection (A) of this Section IV. Plaintiff shall have thirty(30) days from the date of first receipt of a proposed divestiture plan in which to request additional information from Norris, which shall have ten (10) days from the receipt of such request to advise plaintiff the extent to which such information is unavailable and twenty (20) days to furnish in writing such information to the extent it is available. Plaintiff shall have thirty(30) days following the date of receipt of the requested additional information, or following the date of receipt of a written statement from Norris that such information is not available, in which to object in writing to the proposed divestiture plan. If plaintiff objects to the proposed divestiture plan, it shall not be consummated unless plaintiff withdraws its objection or the Court gives its consent to the plan. If no request is made for additional information, plaintiff shall advise defendant in writing no later than thirty (30) days after the receipt of the proposed divestiture plan whether it has any objections to the proposed divestiture plan.

(D) The time periods set forth in subsection (A) of this Section IV shall be tolled from the date plaintiff first receives in writing from Norris the details of any divestiture plan up to and including the date Norris receives written notification of plaintiff's final decision on such divestiture proposal.

(E) Nothing in this Final Judgment shall prohibit Norris from accepting and enforcing a *bona fide* lien, mortgage or other form of security interest, whether by agreement or judgment, on the assets to be divested pursuant to this Final Judgment, to secure full payment of the price at which such assets are sold.

(F) Should Norris reacquire any of the assets divested pursuant to this Final Judgment, Norris is ordered to divest such reacquired assets in accordance with the provisions of this Final Judgment within one(1) year from the date of such reacquisition.

(G) Defendant shall promptly take steps to advise prospective purchasers of the availability of the assets required to be divested by this Final Judgment, and shall furnish to all *bona fide* prospective purchasers on an equal and non-discriminatory basis all necessary information, including business records, regarding the assets to be divested and shall permit such prospective purchasers to make such inspection as may reasonably be necessary for such purpose, provided that defendant may schedule any such inspection in such a manner as not unduly to interfere with its business operations.

V.

[Appointment of Trustee]

If the divestiture required by this Final Judgment has not been completed within three (3) years from the date of entry of this Final Judgment plus any additional time provided for in subsection (D) of Section IV, the Court, upon application by plaintiff, shall appoint a trustee, who shall have full authority to manage and to dispose of FST after opportunity of the parties to be heard. The costs and expenses of such trustee required to accomplish divestiture are to be at the expense of Norris.

VI.

[*Know-How/Licenses*]

(A) In the event PST Plant 1 is divested pursuant to this Final Judgment, the purchaser thereof may, at any time within six (6) months from the completion of the divestiture, request PST technical data from Norris, and Norris shall as promptly as possible supply such technical data at a cost not exceeding the cost of reproducing such data to the extent it already exists in writing, and at a cost not exceeding the cost of preparing such data to the extent it does not already exist in writing. Norris shall, for a period of thirty (30) months following the completion of such divestiture, at the purchaser's request clarify or explain such PST technical data or make reasonable efforts to supplement such PST technical data with additional technical data of PST (whether or not existing in writing on the effective date of this Final Judgment) at a cost not exceeding the cost of such clarifying, explaining or supplementing, to the end of attempting to assist the purchaser to manufacture the industrial cylinders manufactured by PST other than at Plant 1 on the effective date of this Final Judgment, provided that nothing herein shall make Norris a guarantor of the purchaser's ability to manufacture such industrial cylinders by use of such technical data or otherwise.

(B) In the event PST Plant 1 is divested pursuant to this Final Judgment, Norris may retain non-exclusive, royalty-free, licenses with the unrestricted right to sublicense, under any patent or patent applications of PST relating to the manufacture of any product produced by PST other than at PST Plant 1 on the date of completion of divestiture of PST Plant 1, together with copies of, and an unrestricted proprietary interest in, all technical data relating to the manufacture of such products.

VII.

[*Employment Ban*]

No officer, director, agent or employee of Norris shall at the same time be an officer, director or employee of the purchaser of any of the assets divested pursuant to this Final Judgment.

VIII.

[*Acquisition Ban*]

Norris is enjoined and restrained, for a period of ten (10) years from the effective date of this Final Judgment from acquiring without the prior consent of the plaintiff any equity interest in or evidence of indebtedness (other than indebtedness arising from the sale of goods or services in the ordinary course of business) of any company engaged in the manufacture of high pressure compressed gas cylinders, acetylene cylinders, acetylene cylinder shells or accumulator shells or any of the capital assets of any such company that are or have been used in the manufacture of any such products.

IX.

[*Reports*]

Beginning six (6) months after the date of entry of this Final Judgment, and continuing every six (6) months until the divestiture ordered by this Final Judgment has been completed or until the appointment of a trustee pursuant to this Final Judgment, Norris shall furnish a written report to plaintiff setting forth the steps it has taken to accomplish the divestiture required by said Final Judgment.

X.

[*Compliance Inspections*]

For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, and subject to any legally recognized privilege:

(A) Any duly authorized representative 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 Norris, made to its principal office, be permitted (1) access during the regular office hours of Norris, to inspect and copy

any and all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Norris, relating to any of the subject matter contained in this Final Judgment, and (2) subject to the reasonable convenience of Norris, and without restraint or interference from it, to interview officers or employees of Norris, who may have counsel present, regarding such matters.

(B) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, Norris 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 X 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.

XI

[*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 modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.