

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. National Container Association; American Box Board Company; Downing Box Company; Eddy Paper Corporation; Federal Container Company; Fort Wayne Corrugated Paper Company; Robert Gair Company, Inc.; Gaylord Container Corporation; Hinde & Dauch Paper Company; Hummel & Downing Company; Inland Container Corporation (Indiana); Iowa Fibre Box Company; The Jackson Box Company; Kieckhefer Container Corporation; F. J. Kress Box Company; Lawrence Paper Company; Loy-Lange Box Company; National Container Corporation (Delaware); Niagra Corrugated Container Company; Incorporated Rochester Folding Box Company; St. Louis Basket & Box Corporation; Scharff-Koken Manufacturing Company; The Stevenson Corporation (Doing Business as Stevenson, Jordan & Harrison); Superior Paper Products Company; Wabash Fibre Box Company; Waldorf Paper Products Company., U.S. District Court, S.D. New York, 1940-1943 Trade Cases ¶56,028, (Apr. 23, 1940)

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United States of America v. National Container Association; American Box Board Company; Downing Box Company; Eddy Paper Corporation; Federal Container Company; Fort Wayne Corrugated Paper Company; Robert Gair Company, Inc.; Gaylord Container Corporation; Hinde & Dauch Paper Company; Hummel & Downing Company; Inland Container Corporation (Indiana); Iowa Fibre Box Company; The Jackson Box Company; Kieckhefer Container Corporation; F. J. Kress Box Company; Lawrence Paper Company; Loy-Lange Box Company; National Container Corporation (Delaware); Niagra Corrugated Container Company; Incorporated Rochester Folding Box Company; St. Louis Basket & Box Corporation; Scharff-Koken Manufacturing Company; The Stevenson Corporation (Doing Business as Stevenson, Jordan & Harrison); Superior Paper Products Company; Wabash Fibre Box Company; Waldorf Paper Products Company.

1940-1943 Trade Cases ¶56,028. U.S. District Court, S.D. New York. April 23, 1940.

Proceedings under the Sherman Anti-Trust Act commenced by the United States against fibre box manufacturers are terminated by entry of a consent decree enjoining defendant from agreeing or conspiring to formulate, take part in or attempt to enforce any plan, the effect of which is to limit the production of fibre shipping containers to predetermined quotas, to fix or maintain prices for such containers or to make use of predetermined prices. It is provided, however, that defendants may gather and disseminate information as to trade costs, volume of production, past prices, methods of computing prices without, however, specifying the selling price to be charged for containers, and engage in other similar practices in so far as they are not prohibited by law.

Thurman Arnold, Assistant Attorney General; John T. Cahill, United States Attorney; Frank H. Elmore, Jr., Christopher Del Sesto, Manuel M. Gorman, Samuel E. Neel, Special Assistants to the Attorney General; Attorneys for the Plaintiff.

Webster & Garside; Simpson, Thatcher & Bartlett; Parker Newhall of Larkin, Rathbone & Perry; Charles E. Frohman; Saul & Marshall M. Bernstein; Wise, Corlitt & Canfield; Mitchell, Taylor, Capron & Marsh; Attorneys for the defendants.

Consent Decree

The United States of America filed its complaint herein April 20, 1940; each of the above-named defendants appeared and filed its answer to such complaint; no testimony having been taken, each of said defendants consents to the entry of this decree, without any findings of facts, on condition that neither such consent nor this decree shall be evidence, admission, or adjudication that it has violated any law of the United States; and the United States, by counsel, having consented to the entry of this decree and to each and every provision thereof, and having moved for this injunction;

And it appearing that by virtue of the attached consents of said defendants, and the acceptance of the same by the plaintiff, it is unnecessary to proceed with the trial of the action, or to take testimony therein, or to make findings of fact, or to adjudicate the issues presented by the pleadings;

Now, therefore, before any testimony has been taken, and without any findings of fact or adjudication of the issues, and upon the consent of all parties hereto, it is hereby Ordered and Decreed as follows:

[*Jurisdiction*]

1. The Court has jurisdiction of the parties to this decree; and for the purpose of this decree and proceedings for the enforcement thereof, and for no other purpose, the Court has jurisdiction of the subject matter hereof, and the complaint states a cause of action against said defendants, and each of them, under [Section 1 of the Sherman Act](#) (15 U. S. C. A. Sec. 1).

[*Activities Enjoined*]

2. Said defendants, their successors, members, directors, officers, agents, and employees, and all persons acting under, through, or for them, be, and they hereby are, enjoined and restrained from agreeing, combining, or conspiring among themselves or with any other manufacturer of corrugated or solid fibre shipping containers.

[*Production Quotas*]

- (a) to limit production of corrugated or solid fibre shipping containers to predetermined quotas;
- (b) to formulate, promote, or take part in any plan for prorationing of business, or the equitable sharing of available business, the purpose or effect of which is to limit the production of such containers to such quotas;
- (c) to determine the volume of business of manufacturers of such containers for any period or periods for the purpose of establishing such quotas;
- (d) to collect, compile, or compare data respecting production, sales, orders, shipments, or deliveries of such containers for the purpose of determining whether manufacturers of such containers have adhered to, or are adhering to, such quotas;
- (e) to distribute production, shipment, or price data in such form as to indicate that a manufacturer of such containers is or is not adhering to any such quota;
- (f) to prevent or discuss, at meetings of manufacturers of such containers, or elsewhere, or by correspondence or otherwise, production, shipment, or price data in such form or manner as to indicate that a manufacturer of such containers has exceeded any such quota, or that it should limit present or future production so as to come-within any such quota;
- (g) to examine or audit the production, shipment, or price records or accounts of manufacturers of such containers for the purpose of securing adherence to any such quota;
- (h) to allocate, or to refrain from soliciting, customers of manufacturers of such containers, or to allocate markets or marketing territories among the several manufacturers of such containers;

[*Price Fixing*]

- (i) to fix or maintain prices for such containers;

- (j) to use, or to promote the use of, an estimating manual, or any other handbook or device, for the purpose of fixing or maintaining the prices of such containers;
- (k) to use, or to promote the use of, predetermined prices for materials, manufacturing operations, or delivery in
 - (i) estimating or pricing such containers, or
 - (ii) analyzing production, price, sales, order, shipment, or delivery data of manufacturers of such containers for the purpose of fixing or maintaining the prices thereof of two or more manufacturers;
- (l) to examine or audit the production, shipment, or price records or accounts of manufacturers of such containers for the purpose of fixing or maintaining the prices of such containers;
- (m) to compel a manufacturer of such containers
 - (i) to submit copies of invoices to a trade association or like agency, or
 - (ii) to name or identify any customer account in connection with the submission of invoices to such trade association or agency;
- (n) to authorize a trade association or like agency to disclose customer invoices (or data as to individual transactions with customers), which have been submitted by a manufacturer of such containers to such trade association or agency, to a competitor of such manufacturer.

[Activities in Which Defendants May Participate]

3. Nothing contained in this decree limits the right of said defendants, their successors, members, directors, officers, agents, and employees, and all persons acting under, through, or for them, or any of them, to do, or to cooperate in doing, any act, or to engage in any practice, not enjoined by this decree, including but not limited to the following:

- (a) gathering, auditing, and disseminating information as to the cost of manufacture of corrugated and solid fibre containers, the volume of production and shipment, the actual price (or base price derived from actual price) which the product has brought in past transactions, stocks of merchandise and materials on hand, approximate cost of transportation, and any other facts pertaining to the condition or operation of the industry, and meeting to discuss such information and statistics without, however, reaching or attempting to reach any agreement or any concerted action with respect to prices or production of such containers;
- (b) promoting the application of uniform cost accounting to the manufacturing, estimating, and sales policies and practices of manufacturers of such containers;
- (c) compiling, publishing, and circulating, in the form of a currently revised loose leaf industry, manual, handbook, or otherwise, recommended formulas, methods, systems, or procedures, and illustrations thereof, for the computation of selling prices of such containers without, however, in any such industry manual or handbook, specifying or recommending the selling price to be charged for any such containers, the price to be charged for freight or any manufacturing operation or material used in the manufacture of such containers, or rate of profit to be included by any manufacturer in the selling price of any such containers;
- (d) compiling, publishing, and circulating, in any form, current data as to the cost of the materials, operations, and other elements that go into the manufacture, sale, and delivery of such containers, provided, however, that such cost data shall not consist exclusively of average (or weighted average) costs of two or more manufacturers and that the cost of any individual manufacturer shall not be so identified by name or otherwise in any trade association publication as to be made known to its competitors;
- (e) exchanging information as to
 - (i) credit, and

(ii) specific current contracts for the sale of such containers for the sole purpose of avoiding interference with such contracts.

4. Nothing contained in this decree limits the right of a defendant to issue and circulate lists of current prices charged for its corrugated or solid fibre containers provided such lists are made available to the trade and competitors.

5. Nothing contained in this decree shall apply to

(a) any agreement between

(i) a manufacturer of such containers and its subsidiaries,

(ii) a manufacturer and companies associated through common ownership or operating management, or

(iii) the subsidiaries of any such manufacturer;

(b) the conduct of the individual business of any defendant;

(c) manufacture other than the fabrication of shipping containers out of corrugated or solid fibre board;

(d) operations or activities of the defendants outside the United States, its Territories and the District of Columbia, or to their operations or activities within the United States, its

Territories and the District of Columbia, which relate exclusively to foreign countries;

(e) agreements or arrangements permitted by Section I of the Sherman Act as amended by the Act of August 17, 1937, commonly called the Miller-Tydings Act, or by the patent laws.

[Access to Records]

6. For the purpose of securing compliance with this decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on the written request of the Attorney General or an Assistant Attorney General and on reasonable notice as to time and subject matter, be permitted (i) reasonable access, during the office hours of said defendants, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendants, relating to any of the matters enjoined by this decree, (ii) subject to the reasonable convenience of said defendants, and without restraint or interference from them, and subject to any legally recognized privilege, to interview officers or employees of said defendants, in the presence of counsel, regarding any such matters; and said defendants, on such request, shall submit such reports in respect of any such matters as may from time to time be reasonably necessary for the proper enforcement of this decree; provided, however, that information obtained by the means permitted in this paragraph shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice except in the course of legal proceedings in which the United States is a party or as otherwise required by law.

[Retention of Jurisdiction]

7. Jurisdiction of this action is retained for the purpose of enabling any of the parties to this decree to apply to the Court at any time for such further orders or directions as may be necessary or appropriate in relation to the construction of or carrying out of this decree, for the modification thereof (including, without limitation, any modification upon application of said defendants, or any of them, required in order to conform this decree to any act of Congress enacted after the date of entry of this decree or to the laws or regulations of any State), for the enforcement of compliance therewith and the punishment of violations thereof.