

U. S. v. SYNTHETIC NITROGEN PRODUCTS CORP.
IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

Civil Action No. 15-365.

UNITED STATES OF AMERICA, PLAINTIFF

VS.

SYNTHETIC NITROGEN PRODUCTS CORPORATION, ARTHUR
L. MULLALY, CARL B. PETERS, GUSTAV SCHREIBER,
FRANK P. SCAR, MIGUEL TEGTMEYER, DEFENDANTS.

FINAL DECREE.

The complainant, United States of America, having filed its complaint herein on September 5, 1941; the defendants having appeared and filed their answers to such complaint denying the substantive allegations thereof; all parties hereto by their attorneys herein having severally consented to the entry of this final decree herein without trial or adjudication of any issue of fact or law herein and without admission by any party in respect of any such issue;

Now, therefore, before any testimony has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon consent of all parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

That this Court has jurisdiction of the subject matter herein and of all of the parties hereto; that the petition states a cause of action against each of the defendants under the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies" and the acts amendatory thereof and supplemental thereto.

II

"Cal-Nitro" is a trade mark registered in the United States Patent Office in the name of the corporate de-

fendant, and has been used as a trade name for nitrogen bearing fertilizer materials heretofore made and produced in Europe, principally in Norway and Germany, which materials consist of a mixture of ammonium nitrate and calcium carbonate and/or dolomitic limestone, hereinafter referred to as "Ammonium nitrate-dolomitic limestone" or by the letters "A. N.-D. L." and was heretofore imported into the United States and used for agricultural purposes in the several states thereof, in two grades containing approximately 20.5% of nitrogen and 16% of nitrogen, respectively.

III

The defendant, Synthetic Nitrogen Products Corporation, its successors, subsidiaries, officers and employees, be and they hereby are enjoined and restrained from agreeing, combining or conspiring (A) with any mixed fertilizer manufacturer or dealer in or by any agency or resale-maintenance contract or agreement to fix, determine, maintain, or adhere to prices to be charged in the sale of any nitrogen bearing fertilizer, including A. N.-D. L. by such mixed fertilizer manufacturer or dealer, acting as principal or agent, to others; and (B) with any producer or distributor of Nitrate of Soda, Ammonium Sulphate, or Synthetic Ammonia Solutions, or with any producer or distributor of any other nitrogen bearing fertilizer materials:

1. To fix, determine, maintain or adhere to prices to be charged in the sale of A. N.-D. L. or any other nitrogen bearing fertilizer.
2. To fix, determine, maintain or adhere to prices to be charged in the sale of A. N.-D. L. or any other nitrogen bearing fertilizer in terms of the relationship of such prices to the prices of other nitrogen bearing materials or products.
3. To fix, determine, maintain or adhere to prices to be charged in the sale of A. N.-D. L. or any other nitrogen bearing fertilizer in terms per unit of nitrogen contained in other nitrogen bearing fertilizer materials.

4. To fix, determine, maintain or adhere to prices, terms or conditions for the sale of A. N.-D. L. or any other nitrogen bearing fertilizer, the discounts, the commissions, the freight or trucking to be allowed thereon in such sale or freight differentials as between different purchasers, or the charges to be made for bagging, storage, handling or reconditioning in such sales.
5. To quote prices in the sale of A. N.-D. L. or any other nitrogen bearing fertilizer only on the basis of f. o. b. certain ports or inland points or to select the ports or inland points which will be used for the purpose of such quotations by them to others.
6. To establish or designate territories where A. N.-D. L. or any other nitrogen bearing fertilizer shall be sold, or the type of agreement or contract or provision of contracts or agreements to be used in designated areas in such sales.
7. To prevent or restrain shipment or sale to, into, or from the United States, its territories and possessions, of A. N.-D. L., or any other nitrogen bearing fertilizer, except in connection with the prosecution of any legal proceedings against importation or exportation for violation of the law of the United States.
8. To exchange information as to prices to be charged for A. N.-D. L. or any other nitrogen bearing fertilizer, other than where such information is published to the general trade.
9. To exchange statistical and other information as to production, estimated production, imports, exports, sales, shipments, inventories, of A. N.-D. L. or any other nitrogen bearing fertilizer, or private figures as to the importation or exportation of A. N.-D. L. or any other nitrogen bearing fertilizer, other than where such information is published to the general trade.

10. To fix and determine the kind and amount of A. N.-D. L., or any other nitrogen bearing fertilizer, to be sold and to fix and determine the amount of nitrogen to be contained in A.N.-D. L., or any other nitrogen bearing fertilizer sold by them to others.
11. To establish or designate classifications of purchasers of A. N.-D. L. or any other nitrogen bearing fertilizer, or to classify such purchasers or to designate particular purchasers thereof as belonging to or not belonging to any specified class.

Nothing contained in the numbered sub-paragraphs B, 1-11, inclusive, of this paragraph III shall be deemed to prohibit the operation of any existing or future sales agency otherwise lawful when the operations thereunder do not involve any arrangement, agreements, or understanding between the agent and the principal concerning sales or other disposition by the agent of products or commodities belonging to the agent or anyone other than the principal, nor shall the numbered subparagraphs B, 1-11, prohibit the purchase or sale, otherwise lawful, by Synthetic Nitrogen Products Corporation, its successors, subsidiaries, officers or employees from or to any producer or distributor, of A. N.-D. L., or any other nitrogen bearing materials or products.

IV.

Synthetic Nitrogen Products Corporation, its successors, subsidiaries, officers and employees be and they hereby are enjoined and restrained from refusing, when selling A. N.-D. L. or any other nitrogen bearing fertilizer by any method or on any basis to any purchaser located in the continental United States or in a territory of the United States, to permit said purchaser to elect to purchase such A. N.-D. L. or such other nitrogen bearing fertilizer f. o. b. cars point of production in carload lots at the seller's price, terms and conditions, point of production, and if ports are being used as a basis of

quotation by the corporation, then also to permit such a purchaser to elect to purchase such A. N.-D. L. or such other nitrogen bearing fertilizer in carload lots f. o. b. cars any port that is then being used by the seller, so long as such A. N.-D. L. or such other nitrogen bearing fertilizer of the seller is available at such port for delivery to such purchaser at the seller's price, terms, and conditions f. o. b. cars said port.

V

The defendant Synthetic Nitrogen Products Corporation, its successors, subsidiaries, officers and employees be and they hereby are enjoined and restrained from adhering or agreeing to any restrictions or imposing any restrictions on the use or licensing of United States Letters Patent 1,934,836, 1,921,856, 2,038,566 and 2,083,795 which may in any way restrict the use of the patented processes to any field as, for example, the hydro-carbon field or any other field, or for any purpose, for example, only for agricultural fertilizer or for any other restricted purpose, and defendant Synthetic Nitrogen Products Corporation, its successors, subsidiaries, officers and employees be, and they hereby are enjoined and restrained from paying any royalties, or any other sum of money in payment for the privilege to use such patent or in payment for the privilege to license others without express order from this court.

VI

The defendant Synthetic Nitrogen Products Corporation, its successors, subsidiaries, officers and employees are hereby ordered to advise and inform and to give full information to the Attorney General of the United States or the Assistant Attorney General in charge of the Antitrust Division of the happening of events and full data concerning any agreement, combination or cartel mentioned herein:

(1) If the said Synthetic Nitrogen Products Corporation or any of its parents, affiliates, or subsidiaries should enter into any agreement, combination or cartel with

any one or more other producers or distributors of fertilizer nitrogen, the effect or operation of which would result in a violation of any of the provisions of paragraph III hereof.

(2) If any agreement, combination or cartel, to which Synthetic Nitrogen Products Corporation or any of its parents or subsidiaries and any one or more other producers or distributors of fertilizer nitrogen are parties, should become operative in such a way as to result in a violation of any of the provisions of paragraph III hereof.

(3) The failure of the Attorney General of the United States or the Assistant Attorney General in charge of the Antitrust Division to take any action following the receipt of any device or information from Synthetic Nitrogen Products Corporation pursuant to this paragraph VI shall not be construed as an approval of the matters and things so advised or informed, and shall not operate as a bar to any action or proceeding, civil or criminal, which may later be brought pursuant to any law of the United States based on the matters and things so advised and informed.

VII

For the purpose of securing compliance with this decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or an Assistant Attorney General and on reasonable notice to the defendant corporation made to the principal office of the defendant corporation, be permitted, subject to any legally recognized privilege (1) access, during the office hours of the defendant corporation, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant corporation, relating to any matters contained in this decree (2) subject to the reasonable convenience of the defendant corporation and without restraint or interference from them, to interview officers or employees of the defendant corporation, who may have counsel present, regarding any such matters, and (3) the

defendant corporation, 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 for the purpose of securing compliance with this decree in which the United States is a party or as otherwise required by law.

VIII

Jurisdiction of this cause 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 and directions as may be necessary or appropriate for the construction or carrying out of this decree, for the modification or termination of any of the provisions thereof, for the enforcement of compliance therewith and for the punishment of violations thereof.

IX

Nothing in this decree shall be construed to restrict or prohibit in any way any action taken by the defendant corporation, its successors, subsidiaries, officers or employees in good faith and within the fair intendment of the letter of the Attorney General of the United States to the General Counsel of the Office of Production Management, dated April 29, 1941 (a copy of which is attached hereto as Exhibit "A"),¹ or with any amendment or amplification thereof by the Attorney General, or in accordance with any arrangement of similar character between the Attorney General and any National Defense Agency in effect at the time, provided such letter or arrangement has not at the time of such action been withdrawn or cancelled with respect thereto.

X

This decree shall have no effect with respect to operation. 1. For Exhibit "A" See Page 3304.

tions or activities outside the United States, its territories and the District of Columbia not violative of the Anti-Trust Laws or to operations and activities within the United States, its territories and the District of Columbia relating exclusively to acts and operations outside the United States, its territories and the District of Columbia not violative of the Anti-Trust Laws, or to operations and activities, wherever performed, authorized or permitted by the Act of Congress of April 10, 1918, commonly called the Webb-Pomerene Act, or by acts amendatory thereto.

Dated, Sept. 5, 1941.

Approved:

SAMUEL MANDELBAUM,
United States District Judge.

EXHIBIT "A"

APRIL 29, 1941

JOHN LORD O'BRIAN, ESQUIRE,

*General Counsel, Office of Production Management,
Washington, D. C.*

DEAR JOHN: The marshaling of the nation's industrial assets for a maximum productive effort in the national defense will doubtless require the allocation of orders, the curtailment of some kinds of production so as to increase production in defense fields, and the establishment of priorities and price ceilings. Furthermore, many of these steps must necessarily affect the production of goods used to satisfy our normal needs, as well as the production of materials and implements used directly in our defense effort.

Some of these acts if accomplished by private contract or arrangement within an industry and carried on for private advantage would probably constitute violations of the antitrust laws. On the other hand, it is obvious that in the present emergency acts performed by industry under the direction of public authority, and designed to promote public interest and not to achieve private ends, do not constitute violations of the antitrust laws. In these circumstances, the Department of Justice recognizes that business interests which are asked to comply with public plans for increasing production and preventing inflation are entitled to the cooperation of agencies of the Government in eliminating any uncertainties which may exist as to the application of the antitrust laws to their activities.

Accordingly, this Department has formulated a policy which it proposes to follow in its relations with the Office of Production Management and the Office of Price Administration and Civilian Supply and with all industries or contractors acting in compliance with the orders or request of either of these organizations. The important points of this policy are:

Meetings of the industry with the Office of Production Management and the Office of Price Administration and Civilian Supply or their representatives are not illegal. In-

dustrial committees may be formed at the request of the Office of Production Management or the Office of Price Administration and Civilian Supply, to work with representatives of such offices on problems involving defense. There will be nothing unlawful in the industry cooperating in the selection of its representatives or in selecting members for committees, or in the activities of such committees provided they are kept within the scope of this letter.

Questions as to whether there is need for such a committee, and if so, how it shall be chosen, and by whom constituted, shall be the sole responsibility of the Office of Production Management or the Office of Price Administration and Civilian Supply. This Department will not participate in these decisions beyond the suggestion now made that any such committee should be generally representative of the entire industry and satisfactory to the Office of Production Management or the Office of Price Administration and Civilian Supply.

Each industry committee shall confine itself to collecting and analyzing information and making recommendations to the Office of Production Management or the Office of Price Administration and Civilian Supply, and shall not undertake to determine policies for the industry, nor shall it attempt to compel or to coerce any one to comply with any request or order made by a public authority.

All requests for action on the part of any unit of an industry shall be made to such unit by the Office of Production Management or the Office of Price Administration and Civilian Supply and not by the industry committee. That is to say, the function of determining what steps should be taken in the public interest should in each case be exercised by the public authority which may seek the individual or collective advice of the industry. But the determination shall not be made by the industry itself or by its representatives.

Requests for action within a given field, such as the field of allocation of orders, shall be made only after the general character of the action has been cleared with the Department of Justice. If the general plan is approved, thereafter each request for specific action in carrying out such plan shall be

made in writing and shall be approved by the Office of the General Counsel of the Office of Production Management or the office of the General Counsel of the Office of Price Administration and Civilian Supply, but need not be submitted to the Department of Justice. In the case of any change in the personnel of such offices or if serious practical difficulties arise, this latter arrangement may be revoked upon notice from me.

Acts done in compliance with the specific requests made by the Office of Production Management or the Office of Price Administration and Civilian Supply and approved by their General Counsel in accordance with the procedure described in this letter will not be viewed by the Department of Justice as constituting a violation of the antitrust laws and no prosecutions will be instituted for acts performed in good faith and within the fair intendment of instructions given by the Office of Production Management or the Office of Price Administration and Civilian Supply pursuant to this procedure.

In the case of all plans or procedure, however, the Department reserves complete freedom to institute civil actions to enjoin the continuing of acts or practices found not to be in the public interest and persisted in after notice to desist.

With kind personal regards,

Sincerely,

(S) ROBERT H. JACKSON,

Attorney General.