

[¶ 72,441] United States v. Burlington Industries, Inc., et al.

In the United States District Court for the Southern District of New York. 64 Civil Action No. 3090. Entered June 14, 1968.

Case No. 1823 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Glass Fiber Industrial Fabric—Consent Judgment.—As of the time that two firms become engaged in the weaving and/or sale of industrial glass fiber products, they are prohibited by a consent decree from agreeing to fix or set prices, exchange information or submit rigged bids or quotations in the sale of their products, and required to certify their noncollusion with each bid submitted to the government for five years.

See Price Fixing, Vol. 1, ¶ 4620; Department of Justice, Vol. 2, ¶ 8834.10.

For the plaintiff: Donald F. Turner, Assistant Attorney General, William D. Kilgore, Jr., Robert B. Hummel, Samuel B. Prezis, Charles D. Mahaffie, Jr., and William F. Costigan, Attorneys, Department of Justice.

For the defendants: Edward Winsor, of Edwards & Angell, and Irving Reier, of Solomon & Rosenbaum, for Joseph M. P. Ott Mfg. Co., Inc.; Matthew W. Goring, Providence, R. I., for Flightex Fabrics, Inc. (now F. F. R. I., Inc.)

Final Judgments as to Defendants Flightex Fabrics, Inc. and Joseph M. P. Ott Manufacturing Company, Inc.

RYAN, J.: Plaintiff, United States of America, having filed its complaint herein on October 9, 1964, and the consenting defendants, Flightex Fabrics, Inc. (now F. F. R. I., Inc.) and Joseph M. P. Ott Manufacturing Company, Inc., having appeared and having filed answers denying the substantive allegations of the complaint, and the plaintiff and the consenting defendants, by their respective attorneys, having consented to the entry of this Final Judgment as to the consenting defendants without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence of an admission by plaintiff or consenting defendants with respect to any such issue, and this Court, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, having determined that there is no just reason for delay in entering a Final Judgment as to all of plaintiff's claims asserted in said complaint against such consenting defendants and having directed the entry of such a Final Judgment:

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

I

[Jurisdiction]

This Court has jurisdiction of the subject matter hereof and of the parties consenting hereto. The complaint states a claim for relief against the consenting 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. The making and entering of this Final Judgment shall not prejudice or estop plaintiff from obtaining other, further and different relief against the defendants, other than the consenting defendants, in this action.

II

[Definitions]

As used in this Final Judgment:

(A) "Person" shall mean an individual, partnership, firm, association, corporation or other legal or business entity.

(B) "Glass fiber industrial fabrics" shall mean fabrics woven from glass fiber yarns and sold for industrial application or use and includes woven roving and tape, but does not include decorative fabrics and insect screening.

(C) "United States" shall mean the United States of America, its territories and possessions.

III

[Commencement of Application]

The provisions IV, V, VI, VII, VIII and X of this Final Judgment shall commence to be applicable to each consenting defendant at such time as it becomes engaged in the weaving and/or sale of industrial glass fiber products.

IV

[Applicability]

At such time as the provisions of this Final Judgment shall be applicable to either consenting defendant, they shall also apply to the respective subsidiaries, successors, assigns, officers, directors, agents and employees of such defendant, and to all other persons in active concert or participation with such defendant who receive actual notice of this Final Judgment by personal service or otherwise; provided, however, that such provisions shall not be applicable to activities conducted outside the United States and not in unreasonable restraint of the domestic or foreign commerce of the United States; and further provided that defendants in the course of making sales for export may comply with the laws of the foreign countries involved.

V

[Conspiracy]

At such time as the provisions of this Final Judgment shall be applicable to either consenting defendant, such defendant is enjoined and restrained from combining or conspiring, or entering into, enforcing or claiming any rights under any agreement, arrangement, or understanding with any other weaver of glass fiber industrial fabrics, to:

(A) Eliminate or suppress unreasonably competition in the sale of glass fiber industrial fabrics;

(B) Fix, establish, or maintain, stabilize, adhere to, or adopt prices pricing methods, discounts, terms or conditions for the sale of glass fiber industrial fabrics to any third person;

(C) Exchange information concerning prices, pricing methods or other terms and conditions of sale for the sale of glass fiber industrial fabrics to any third person; or

(D) Submit collusive or rigged bids or quotations for supplying any glass fiber industrial fabrics.

VI

[Certificate of Noncollusion]

At such time as the provisions of this Final Judgment shall be applicable to either consenting defendant, such defendant is ordered and directed, for a period of five (5) years from the date of entry of this Final Judgment, to submit, with each sealed bid for glass fiber industrial fabrics submitted to the plaintiff, or any department or agency thereof, a certification of non-collusion in the form required by the purchasing department or agency, or, if no such certification is otherwise required, in substantially the form set forth in the Appendix hereto.

VII

[Independent Pricing]

At such time as the provisions of this Final Judgment shall be applicable to either consenting defendant, such defendant is enjoined and restrained from:

(A) Utilizing, as a means of determining in whole or in part the price or prices at which it will sell glass fiber industrial fabrics, any cost or pricing formula, or part thereof, which has not been independently arrived at by the consenting defendant on the basis of its individual business judgment;

(B) Communicating, directly or indirectly, to any weaver of glass fiber industrial fabrics, information relating to prices, terms or conditions of sale at or upon which such fabrics are being sold or will be sold to any third person, other than such information which has been previously or is simultaneously released to the trade generally.

VIII

[Trade Association]

At such time as the provisions of this Final Judgment shall be applicable to either consenting defendant, such defendant is enjoined and restrained from belonging to or participating in any of the activities of any trade association or other organization, with knowledge that the activities or objectives of such trade association or other organization would violate any of the terms of this Final Judgment if such trade association or other organization were a consenting defendant to this Final Judgment.

IX

[Webb-Pomerene Rights]

Nothing contained in this Final Judgment shall be deemed to prevent either consenting

defendant from exercising such rights as it may have under the Act of Congress of April 10, 1918, commonly known as the Webb-Pomerene Act.

X

[Inspection and Compliance]

At such time as the provisions of this Final Judgment shall be applicable to either consenting defendant, for the purposes of securing compliance with this Final Judgment and for no other purposes, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to such defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access, during the office hours of such defendant, which may have counsel present, to those books, ledgers, accounts, correspondence, memoranda and other records and documents in its possession or under its control regarding any subject matter 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 such defendant, who may have counsel present, regarding any such matters.

Upon such written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and for the purposes of securing compliance with this Final Judgment and for no other purpose, such defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment. No information obtained by the means provided in this Section 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 Records]

Each consenting defendant is ordered and directed for a period of five (5) years from the date of entry of this Final Judgment or until such time as all cases consolidated into 64 Civil No. 3090 are disposed of, whichever shall first occur, to retain and preserve its records and documents relating to the subject matter of the aforesaid consolidated cases. Upon approval of the Court, such defendant may alter, remove or destroy any of such records and documents.

XII

[Jurisdiction Retained]

Jurisdiction is retained for the purpose of enabling any of the parties consenting to this Final Judgment to apply to the Court at any time (i) for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, (ii) for the modification of any of the provisions thereof, and (iii) for the enforcement of compliance therewith and the punishment of violations thereof.

Appendix

The undersigned hereby certifies that, to his best knowledge and belief, the annexed bid has not been prepared in collusion with any other manufacturer or seller of glass fiber industrial fabrics and that the prices, terms or conditions thereof have not been communicated by or on behalf of the bidder to any such person and will not be communicated to any such person prior to the official opening of said bid.