

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Burlington Industries, Inc., et al., U.S. District Court, S.D. New York, 1968 Trade Cases ¶72,369, (Mar. 29, 1968)

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United States v. Burlington Industries, Inc., et al.

1968 Trade Cases ¶72,369. U.S. District Court, S.D. New York. 64 Civil Action No. 3090. Entered March 29, 1968. Case No. 1823 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Glass Fiber Industrial Fabric—Consent Judgment —A weaver and seller of glass fiber industrial fabric was prohibited by a consent judgment from agreeing to fix or set prices, exchange information or submit rigged bids or quotations in the sale of its products, and required to certify its non-collusion with each bid submitted to the government for five years.

For the plaintiff: Donald F. Turner, Assistant Attorney General; Baddia J. Rashid, Charles D. Mahaffie, Jr., William D. Kilgore, Jr., Samuel B. Prezis and William F. Costigan, Dept. of Justice.

For the defendants: Winthrop, Stimson, Putnam Sr Roberts by Terence H. Benbow.

Final Judgment as to Defendant Fiber Glass Industries, Inc.

RYAN, D. J.: Plaintiff, United States of America, having filed its complaint herein on October 9, 1964, against defendants including defendant Fiber Glass Industries, Inc. (the "consenting defendant"), and the plaintiff and the consenting defendant, by their respective attorneys, having consented to the entry of this Final Judgment as to the consenting defendant 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 defendant 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 defendant 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 party consenting hereto. The complaint states a claim for relief against the consenting defendant 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 obtaining other, further and different relief against the defendants, other than the consenting defendant, 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

[Applicability]

The provisions of this Final Judgment applicable to the consenting defendant shall also apply to each of its subsidiaries, successors, assigns, officers, directors, agents, and employees, and to all other persons in active concert or participation with the consenting 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 defendant in the course of making sales for export may comply with the laws of the foreign countries involved.

IV

[Conspiracy]

The consenting 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.

V

[Certificate of Non-collusion]

The consenting 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.

VI

[Independent Pricing]

The consenting 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.

VII

[Trade Association]

The consenting 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.

VIII

[Webb-Pomerene Rights]

Nothing contained in this Final Judgment shall be deemed to prevent the 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.

IX

[Inspection and Compliance]

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

- (A) Access, during the office hours of the consenting defendant, which may have counsel present, to those books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the consenting defendant regarding any subject matter contained in this Final Judgment; and
- (B) Subject to the reasonable convenience of the consenting defendant and without restraint or interference from it, to interview officers or employees of the consenting 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 for the purposes of securing compliance with this Final Judgment and for no other purposes, the consenting 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.

X

[Retention of Records]

The 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, to retain and preserve its records and documents relating to the subject matter of the aforesaid consolidated cases. Upon approval of the Court, the consenting defendant may alter, remove, or destroy, any of such records and documents.

XI

[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 o-r 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.