

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. N. V. Nederlandsche Combinatie Voor Chemische Industrie, et al., U.S. District Court, S.D. New York, (Jul. 8, 1970)

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United States v. N. V. Nederlandsche Combinatie Voor Chemische Industrie, et al.

1970 Trade Cases ¶73,181. U.S. District Court, S.D. New York. Civil Action No. 70 Civ. 2079. Entered July 8, 1970. Case No. 2102 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Quinine and Quinidine—Consent Decree.—Manufacturers of quinine and quinidine were enjoined from entering into agreements fixing prices, allocating territories, establishing quotas, submitting collusive or rigged bids, eliminating other producers and designating or acting as exclusive import agents. For a period of ten years, so long as each manufacturer is selling or offering for sale any product in the United States to any manufacturer, processor or manufacturing consumer, each manufacturer must sell such product to any financially and commercially responsible person falling within any such class to which the manufacturer is then selling, upon the written request of such person.

For the plaintiff: Richard W. McLaren, Asst. Atty. Gen., Wilbur L. Fugate, William D. Kilgore, Jr., Harry G. Sklarsky, Robert E. Easton and C. Brooke Armat, Attys., Dept of Justice.

For the defendants: White & Case, for Mead Johnson & Co.; Dewey, Ballantine, Bushby, Palmer & Wood, for Dart Industries Inc.; Cadwalader, Wickersham & Taft, for Vantorex, Ltd.; Turk, Marsh, Kelly & Hoare, for R. W. Greeff & Co., Inc.

Final Judgment

EDELSTEIN, D. J.: Plaintiff, United States of America, having filed its complaint herein on May 21, 1970, and plaintiff and the consenting defendants Dart Industries Inc., Mead Johnson & Company, R. W. Greeff & Co., Inc., Vantorex, Ltd. by their respective attorneys, each 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 an admission by any party consenting hereto with respect to any such issue, and this Court having determined pursuant to Rule 54(b) of the Federal Rules of Civil Procedure 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 the consenting defendants and having directed the entry of such a Final Judgment.

Now, Therefore, without the taking of any testimony and without trial or adjudication of or finding on any issue of fact or law herein, and upon the consent of plaintiff and of each of the consenting defendants, 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 claims upon which relief may be granted 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, and Section 73 of the Act of Congress of August 27, 1894 entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes," commonly known as the Wilson Tariff 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 not consenting hereto.

II

[*Definitions*]

As used in this Final Judgment:

- (A) "Person" means any individual, partnership, firm, corporation, association or other business or legal entity;
- (B) "Product" means any prescription pharmaceutical product composed in whole or in part of quinine, natural quinidine, quinidine synthesized from quinine, any quinine salt or any material extracted from the bark of the cinchona tree, and cinchona bark; or any non-prescription pharmaceutical product containing a not insubstantial quantity of any of the aforesaid materials in proportion to the total active ingredients of such product;
- (C) "United States" means the United States, any territory thereof, the District of Columbia and any insular possession or other place under the jurisdiction of the United States.

III

[*Applicability*]

The provisions of this Final Judgment applicable to any consenting defendant shall also apply to each of its officers, directors, agents and employees, its subsidiaries, successors and assigns, and to all other persons in active concert or participation with such consenting defendant who shall have received actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment, each consenting defendant and its subsidiaries, officers, directors, servants and employees or any of them, shall be deemed to be one person when acting in such capacity. Except for sales to the plaintiff or any agency or instrumentality thereof, this Final Judgment shall not apply to activities outside the United States which do not affect the foreign or domestic commerce of the United States.

IV

[*Agreements*]

The consenting defendants are each enjoined and restrained from directly or indirectly in any manner entering into, adhering to, maintaining, enforcing or claiming any rights under any contract, agreement, arrangement or understanding, with any other person to:

- (A) Fix, maintain or stabilize the price for the sale of any Product to any third person;
- (B) Allocate, limit or divide territories or markets for the sale, production, processing or purchase of any Product;
- (C) Establish quotas for the manufacture, processing or sale of any Product;
- (D) Confine the manufacturing or processing of any Product to any certain manufacturers or processors;
- (E) Eliminate any producer of any Product other than by the sale of all or a part of a business or by a lawful covenant ancillary to any such sale;
- (F) Designate or utilize any person as an exclusive agent for the importation into or the sale in the United States of any Product;
- (G) Act as exclusive agent for any defendant for the importation into or sale in the United States of any Product;
- (H) Submit noncompetitive, collusive or rigged bids or quotations for any purchase or sale of any Product.

V

[*Sales to Others*]

For a period of ten years from the date of entry of this Final Judgment, so long as a consenting defendant is selling or offering for sale any Product in the United States to any manufacturer, processor or manufacturing consumer, the defendant is ordered and directed to sell such Product to any financially and commercially responsible person falling within any such class to which defendant is then selling, upon the written request of

such person, if a supply of such Product is available or will be reasonably available in the form desired, and if the Product is not a specialty product, and if the person desiring to purchase is regularly engaged in using such Product; except that in the event of short supplies of a Product, the consenting defendant may reasonably take into consideration the extent of previous business dealings with such person making written request.

VI

[*Inspection and Compliance*]

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

(A) Access at such consenting defendant's principal office during reasonable office hours to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such consenting defendant, who may have counsel present, relating to any of the subject matters contained in this Final Judgment; and

(B) Subject to the reasonable convenience of such consenting defendant, and without restraint or interference from it, to interview at such consenting defendant's principal office, officers or employees of such 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 and for the purpose of securing compliance with this Final Judgment and for no other purpose, and subject to any legally recognized privilege, such consenting defendant shall submit such reports in writing to the Department of Justice with respect to any of 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 shall be divulged by any representatives of the Department of Justice to any person than a duly authorized representative of the Executive Branch of the plaintiff, except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VII

[*Jurisdiction Retained*]

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