

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Darling-Delaware, Inc. et al, U.S. District Court, S.D. New York, 1972 Trade Cases ¶73,951, (May 30, 1972)

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United States v. Darling-Delaware, Inc. et al

1972 Trade Cases ¶73,951. U.S. District Court, S.D. New York. 70 Civ. 5536. Entered May 30, 1972. Case No. 2146, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing—Rendering—Consent Decree.—Renderers of raw materials (fat, bones, meat trimmings, etc.) were prohibited by a consent decree from agreeing, in connection with the purchase of raw materials, to fix or stabilize prices, submit rigged bids, allocate markets, refrain from soliciting business from accounts of other renderers, coerce any renderer to refrain from soliciting business or making bids, or to exchange bidding information. Affidavits of bidding compliance were required.

Exchange of Information—Rendering—Consent Decree.—Renderers of raw materials (fat, bones, meat trimmings, etc.) were prohibited by a consent decree from exchanging with any other renderer any information concerning the names and locations, and acquisition or loss of any account, or concerning bids, prices, terms or conditions of sale, pricing differentials or pricing practices relating to the purchase of raw materials by renderers prior to the communication of such information to the public generally except in connection with any bona fide purchase, sale or processing transaction between the consenting defendants and another renderer.

For plaintiff: Walker B. Comegys, Acting Asst. Atty. Gen., Baddia J. Rashid, Bernard M. Hollander, Samuel London and Edward F. Corcoran, Dept. of Justice.

For defendants: David S. Patterson, of Breed, Abbott & Morgan, New York, N. Y., for Darling-Delaware, Inc. and Quaker Soap Co., Inc.; Gordon B. Spivack, of Lord, Day & Lord, New York, N. Y., for Herman Isacs, Inc.; Gerald J. Dunworth, of Coudert Brothers, New York, N. Y., for N. J. Soap Co., Inc.; Weintraub & Gold, New York, N. Y., for Pinkas-Fischer & Co., Inc.; Bmil N. Baar, of Baar, Bennett & Fullen, New York, N. Y., for Rencoa, Inc.; Mervin C. Pollak, New York, N. Y., for I. Schonwalter & Co., Inc.; Thomas Kiernan, of White & Case, New York, N. Y., for Swift & Co.; Robert B. Fiske, Jr., of Davis, Polk & Ward well, New York, N. Y., for Wilson Pharmaceutical & Chemical Corp.; Jay H. Topkis, of Paul, Weiss, Rifkind, Wharton & Garrison, New York, N. Y., for Standard Tallow Co.; Charles H. Miller, of Marshall, Bratter, Greene, Allison & Tucker, New York, N. Y., for Lincoln Farm Products Corp.; Donald A. Robinson, of Robinson, Wayne & Greenberg, Newark, N. J., for Theobald Industries.

Final Judgment

PALMIERI, D. J.: Plaintiff, United States of America, having filed its complaint herein on December 17, 1970, and plaintiff and the consenting defendants Darling-Delaware, Inc. Herman Isacs, Inc. The New Jersey Soap Company, Inc. Pinkas-Fischer & Co., Inc., Quaker Soap Company, Inc., Rencoa, Inc., I. Schonwalter & Co., Inc., Swift & Company, Wilson Pharmaceutical & Chemical Corporation and The Standard Tallow Co., 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 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, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter of this action and of the plaintiff and the consenting defendants. The complaint states a claim 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," as amended (15 U. S. C. §1), commonly known as the Sherman Act.

II

[*Definitions*]

As used in this Final Judgment:

- (a) "Raw materials" means inedible fats, bones, unrefined grease, suet, and meat trimmings which are converted into tallow, grease, crackling, animal and poultry feed, fertilizer or other products;
- (b) "Renderer" means a person or company that purchases, collects and converts raw materials into tallow, grease, crackling, animal and poultry feed, fertilizer or other products;
- (c) "Account" means a person or company that supplied a renderer with raw materials;
- (d) "New York Metropolitan Area" means the five boroughs of the City of New York and Nassau, Suffolk, Westchester and Rockland Counties in the State of New York, and Bergen, Passaic, Hudson, Essex, Union, Morris, Middlesex, Burlington and Monmouth Counties in the State of New Jersey.

III

[*Applicability*]

The provisions of this Final Judgment shall apply to the consenting defendants, their successors, subsidiaries and assigns, and to their officers, directors, agents and employees, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[*Price Fixing*]

Each consenting defendant is enjoined and restrained from directly or indirectly entering into, adhering to, maintaining, enforcing or claiming any rights under any contract, agreement, arrangement, understanding, plan or program with any other renderer in connection with the purchase of raw materials to:

- (a) Fix, maintain or stabilize prices, terms or conditions of purchase;
- (b) Submit collusive or noncompetitive bids to any accounts,
- (c) Divide or allocate markets, territories or accounts;
- (d) Refrain from soliciting or accepting business from accounts of other Tenderers;
- (e) Suggest or recommend that any renderer, or threaten or coerce any renderer to, refrain from soliciting any account;
- (f) Exchange information with any other renderer relating to an intention to bid or to refrain from bidding, or to the price or other terms or conditions to be bid, on the purchase of raw material for rendering.

V

[*Exchange of Information*]

Each consenting defendant is enjoined and restrained from directly or indirectly:

- (a) Communicating to, soliciting from, or exchanging with any other renderer any information concerning

- (1) the names and locations, and acquisition or loss of any account, and
- (2) bids, prices, terms or conditions of sale, pricing differentials or pricing practices relating to the purchase of raw materials by Tenderers prior to the communication of such information to the public generally except in connection with any bona fide purchase, sale or processing transaction between the consenting defendants and another Tenderer,
- (b) Advising any other renderer of, or making any inquiry of any other renderer as to, any intention to bid or refrain from bidding on the purchase of raw materials;
- (c) Requesting or recommending that any renderer, or threatening or coercing any other renderer to, refrain from soliciting or bidding for the purchase of raw materials, provided however that this Section V (c) shall not be construed to prohibit each consenting defendant from legally exercising such lawful rights, if any, it may have to prevent tortious interference by any person with a lawful contract between any account and each consenting defendant or any of such defendant's subsidiaries or affiliates.

VI

[*Bidding Affidavits*]

For a period of five (5) years following the effective date of this Final Judgment, each consenting defendant shall in connection with any written bid submitted by it to any account for the collection of raw materials from locations within the New York Metropolitan Area, supply to such account if requested an affidavit containing a statement that the bid submitted by said defendant is not collusive or rigged and that such affidavit is in compliance with the provisions of this Final Judgment.

VII

[*Inspection and Compliance*]

For the purpose of securing or determining compliance with this Final Judgment, 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 a consenting defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(a) Access, during office hours of said defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant relating to any matters contained in this Final Judgment;

(b) Subject to the reasonable convenience of said defendant, and without restraint or interference from it, to interview officers or employees of said defendant, who may have counsel present, regarding any such matters.

Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, consenting defendants shall submit such reports in writing, under oath if so requested, with respect to the matters contained in this Final Judgment as may from time to time be requested.

No information obtained by the means permitted in this Section VII 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 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.

VIII

[*Jurisdiction Retained*]

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