

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)
Plaintiff,) Civil Action No. 72 Civil 368
v.) Filed: MAY 15 1975
M&T CHEMICALS, INC.) Entered: September 23, 1975
Defendant.)

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on January 26, 1972, and defendant, M&T Chemicals, Inc., without admitting any violations of law as alleged in such complaint, and the parties hereto, by their respective attorneys, having consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without admission by any party in respect to any such issue;

NOW, THEREFORE, before the taking of any testimony and upon said consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I.

This Court has jurisdiction of the subject matter hereof and the parties hereto. The complaint states claims against defendant upon which relief may be granted 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 under Section 3 of the Act of Congress of October 15, 1914, commonly known as the Clayton Act, as amended.

II.

As used herein:

- A. "Person" shall mean any individual, partnership, corporation, association or any other business or legal entity;
- B. "Electroplating materials" shall mean chemicals and equipment for nickel electroplating processes, including, but not limited to brighteners, alkaline cleaners, boric acid and other acids, salts and tanks;
- C. "Nickel" shall mean electrolytic nickel, S. D. nickel, nickel anode bars, S. D. nickel chips and each of them.

III.

The provisions of this Final Judgment applicable to the defendant shall also apply to each of its officers, agents,

servants, employees and attorneys, 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. The provisions of this Final Judgment shall not apply to sales of electroplating materials or nickel for use outside the United States except for sales of electroplating materials to or for the use of plaintiff or any instrumentality or agency thereof.

IV.

Defendant is ordered and directed, within thirty (30) days after the date of this Final Judgment, to advise in writing each of its nickel electroplating customers that this Final Judgment prohibits defendant from selling or offering to sell nickel on the condition or understanding that purchasers buy electroplating materials from defendant, and that this Final Judgment prohibits defendant from allocating nickel among its customers conditioned on their purchasing of electroplating materials from defendant.

V.

Defendant is enjoined and restrained from directly or indirectly in any manner:

- A. Selling or offering to sell nickel on the condition, agreement or understanding that any purchaser buy electroplating materials from defendant;
- B. Allocating the amount of nickel to any person conditioned on such person's purchasing of

electroplating materials from defendant; provided, however, that nothing contained in this Final Judgment shall prevent defendant from allocating nickel on a fair and equitable basis;

C. Refusing to sell, or unlawfully discriminating in prices of nickel, conditioned on the fact the purchaser has or has not bought, is or is not buying, or will or will not agree to buy electroplating materials from defendant.

VI.

For a period of six (6) years from the date of entry of this Final Judgment, the defendant is ordered to file with the plaintiff, on each anniversary date of this Final Judgment, a report setting forth the steps which it has taken during the prior year to advise the defendant's appropriate officers, directors, and employees of its and their obligations under this Final Judgment.

VII.

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant, made through its principal office, be permitted (1) access during office hours to all books, ledgers, accounts, correspondence, memoranda,

and other records and documents in the possession or under the control of the defendant relating to any of the subject matters contained in this Final Judgment, and (2) subject to the reasonable convenience of defendant, and without restraint or interference from it to interview officers or employees of the defendant, who may have counsel present, regarding any such matters; and upon such request 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 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 plaintiff, except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VIII.

Upon sixty (60) days' written notice to the Attorney General, the defendant may file a petition with this Court, at any time after ten years following entry of this Final Judgment, for abatement of the provisions in Paragraph V herein. In any such proceeding, the burden shall be upon the defendant to establish that such provisions are no longer needed either to restore competition, or to remove the effects of the violations of law alleged in the Complaint, or to prevent their recurrence.

IX.

Jurisdiction is retained for the purposes of enabling any of the parties 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 or for the modification of any of the provisions thereof, and for the enforcement of compliance therewith and the punishment of violations thereof.

X.

The entry of this Final Judgment is in the public interest.

Dated: 9/23/75

/s/ CONSTANCE BAKER MOTLEY
United States District Judge