

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. DeBeers Industrial Diamond Division (Ireland) Ltd., ANCO Diamond Abrasives Corp., and Diamond Abrasives Corp., U.S. District Court, S.D. New York, 1978-1 Trade Cases ¶62,056, (Dec. 8, 1976)

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United States v. DeBeers Industrial Diamond Division (Ireland) Ltd., ANCO Diamond Abrasives Corp., and Diamond Abrasives Corp.

1978-1 Trade Cases ¶62,056. U.S. District Court, S.D. New York, Civil Action No. 74 Civ. 5389 LPG, Entered December 8, 1976, (Competitive impact statement and other matters filed with settlement: 41 *Federal Register* 28230, 49868).

Case No. 2426, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing: Selling Prices: Allocation of Territories, Markets or Customers: Collusive Bidding: Diamond Grit: Consent Decree.— An Ireland supplier of diamond grit was prohibited by a consent decree from agreeing to fix prices, allocate territories, markets or customers and submit collusive or rigged bids in connection with any sale of diamond grit.

Price Fixing: Price Information: Meeting Restriction and Report Requirements: Consent Decree.— An Ireland supplier of diamond grit was prohibited by a consent decree for a five-year period from sponsoring any conference, meeting or seminar for its diamond grit distributors, not dealing exclusively with technical matters concerning development and application of diamond materials and was required during that period to file periodic affidavits with the government describing all subjects relating to the sale of diamond grit discussed at any such meeting.

Refusal to Deal: Discrimination: Diamond Grit: Consent Decree.— An Ireland supplier was prohibited by a consent decree from terminating, curtailing sales or otherwise penalizing any distributor because of the prices at which, the persons to whom, or the areas in which, the distributor had sold or offered to sell diamond grit.

Department of Justice Enforcement and Procedure: Administrative Provisions and Enforcement:

Appointment of Agent for Service of Process: Consent Decree.— An Ireland supplier of diamond grit was required to appoint a New York corporation as its agent for the sole purpose of receiving service of process in any proceeding by the government under the decree, during a 10-year period.

Department of Justice Enforcement and Procedure: Administrative Provisions and Enforcement: Letter of Credit: Diamond Grit: Consent Decree.— An Ireland supplier of diamond grit was required by a consent decree to establish and maintain, for a period of 10 years, an irrevocable letter of credit with a New York bank in the amount of \$125,000 in favor of the government to serve as security for the satisfaction of any final judgment adjudicating the defendant in contempt of the decree. Payment shall be made under said letter of credit only to the government and upon occurrence of: (a) the procuring by the government of a final judgment against the defendant, not subject to further appeal, adjudicating that the defendant is in contempt of the decree and imposing a penalty for a sum certain upon the defendant by reason of that contempt; and (b) the certification by the Attorney General of the United States or the Assistant Attorney General in charge of the Antitrust Division—and by no other person—as to the procurement of the contempt judgment by the government, its non-appealable nature and the monetary amount of the penalty. In the event of any payment made under the letter of credit, the defendant shall add an equal amount to the remaining balance so that the \$125,000 remains available as security.

For plaintiff: Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, Charles F. B. McAleer, Joel Davidow, Richard L. Daerr, Jr., Stephen P. Kilgriff, James A. Gilbert, Attys., Antitrust Div., Dept. of Justice. **For defendant:** Shearman & Sterling, by Robert L. Clare, Jr., for DeBeers Industrial Diamond Div.

Final Judgment

GAGLIARDI, D. J.: Plaintiff, United States of America, having filed its complaint herein on December 10, 1974, and plaintiff and the consenting defendant, DeBeers Industrial Diamond Division (Ireland) Limited, by its attorneys, having consented to waive, solely for the purpose of this Final Judgment, its rights to contest the jurisdiction of the Court over its person and, having further consented to the entry of this Final Judgment, without trial or adjudication of any issue of fact or law herein, including the issue of jurisdiction over the person of the consenting defendant, and without this Final Judgment constituting evidence or an admission by the consenting defendant with respect to any such issue:

Now, therefore, without the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of plaintiff and of said consenting defendant, it is hereby

Ordered, adjudged and decreed as follows:

I

[Jurisdiction]

This Court has jurisdiction of the subject matter herein and of the defendant solely for the purposes of this Final Judgment. The complaint states claims upon which relief may be granted 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.

II

[Definitions]

As used in the Final Judgment:

(A) "Person" means any individual, partnership, firm, corporation, association, or other business or legal entity;

(B) "Diamond Grit" means synthetic and natural diamond crushing bort, grit or powder used primarily, though not exclusively, as abrasive in metal bonded grinding wheels for grinding of stone, glass and ceramics; in resin bonded wheels for the grinding of tungsten carbide and certain steels; in metal bonded saws for cutting of concrete and masonry and in certain impregnated drills;

(C) "Subsidiary" means any Person controlled by the consenting defendant or one in which 50 percent or more of the voting rights is owned or controlled by the consenting defendant;

(D) "Affiliate" means any Person engaged directly or indirectly in the sale of diamond grit in which 50 percent or more of the voting rights is owned or controlled by the consenting defendant's shareholder;

(E) "Distributor" means any Person appointed or acknowledged by the consenting defendant on the date of entry of this Final Judgment, and any person thereafter so appointed or acknowledged, as a distributor of diamond grit supplied by consenting defendant.

(F) "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 Sections IV, V and VI of this Final Judgment applicable to the consenting defendant shall also apply to each of its officers, directors, agents and employees, its parent companies, subsidiaries, affiliates, successors and assigns, and to all other persons in active concert or participation with the consenting defendant who shall have received actual notice of this Final Judgment by personal service or otherwise. The

Final Judgment shall not apply to (i) transactions or activity solely between a consenting defendant and its subsidiaries, affiliates, officers, directors, agents, parent companies, employees or any of them when acting in such capacity or (ii) transactions or activity outside the United States which do not have a direct or substantial effect on the foreign or domestic commerce of the United States, except sales by the consenting defendant to the plaintiff or any agency or instrumentality thereof or (iii) transactions or activity required by the laws or regulations of the jurisdictions in which the transaction or activity takes place.

IV

[Prices, Territories, Meetings]

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

(A) Entering into, adhering to, maintaining, furthering, enforcing or claiming any rights under any contract, agreement, arrangement or understanding, with any person purchasing diamond grit from it to:

(1) Fix, maintain or stabilize the price to be charged by such person for the sale of diamond grit to any third person;

(2) Allocate, limit or divide territories, markets or customers for the sale of diamond grit;

(3) Submit noncompetitive, collusive or rigged bids or quotations for any sale of diamond grit;

(B) For a period of five years from the date of this Final Judgment, sponsoring any conference, meeting or seminar for its diamond grit distributors, unless such conference, meeting or seminar deals exclusively with technical matters concerning the development and application of diamond grit or other similar materials.

V

[Reports]

For a period of five years from the date of entry of this Final Judgment, the consenting defendant is ordered to file with plaintiff, every six months for the first two years and annually for the remaining three years, an affidavit in writing listing and describing all subjects relating to the sale of diamond grit by the consenting defendant's diamond grit distributors discussed by or communicated to the participants at any meeting, conference or seminar sponsored by the consenting defendant for its diamond grit distributors.

VI

[Refusal to Deal]

Consenting Defendant is enjoined and restrained from directly or indirectly:

(A) Terminating or threatening to terminate any diamond grit distributor because of the prices at which, the persons or classes of persons to whom, or the areas in which such distributor has sold or offered to sell diamond grit; and

(B) Discontinuing, curtailing or limiting the sale of diamond grit, or otherwise penalizing any diamond grit distributor because of the prices at which, the persons or classes of persons to whom, or the areas in which such distributor has sold or offered to sell diamond grit.

VII

[Inspection and Compliance]

For the purpose of determining or 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 the consenting defendant made to its principal office, duly authorized representatives of the Department of Justice shall be permitted:

(A) Access to the consenting defendant's principal office during its office hours to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the consenting defendant, who may have counsel present, relating to any of the 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 at the consenting defendant's principal office, officers or employees, 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, the 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 permitted in this Section VII shall be divulged by any representative of the Department of Justice to any other 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

[*Process*]

Service of process in any proceeding for the purpose of the construction, carrying out, modification, enforcement of compliance or punishment of any violation of this Final Judgment, and for no other purpose, may be effected on consenting defendant by personal service upon Shearman & Sterling, 53 Wall Street, New York, New York, and consenting defendant hereby constitutes Shearman and Sterling as its agent for the sole purpose of receiving service in any such proceeding by the plaintiff under this Final Judgment. Service so made shall be deemed service on consenting defendant. The terms of this Section shall cease to have any force or effect at the expiration of a period of ten (10) years from the date of entry of this Final Judgment.

IX

[*Letter of Credit*]

Consenting Defendant shall establish and maintain, for a period of ten (10) years from the date of entry of this Final Judgment, an irrevocable letter of credit with a bank having an office in New York, New York in the amount of one hundred twenty-five thousand dollars (\$125,000.00) in favor of the United States of America, to serve as security for the satisfaction of any final judgment, not subject to further appeal, which judgment adjudicates that consenting defendant is in contempt of this Final Judgment and imposes a penalty for a sum certain upon consenting defendant by reason of such contempt.

Payment shall be made under said letter of credit only to the United States of America, and only upon each occurrence of both of the following:

(A) The procuring by the United States of America against the consenting defendant of a final judgment, not subject to further appeal, adjudicating that consenting defendant is in contempt of this Final Judgment and imposing a penalty for a sum certain upon consenting defendant by reason of such contempt; and

(B) The certification by the Attorney General of the United States or the Assistant Attorney General in charge of the Antitrust Division of the United States Department of Justice (and by no other person) of the fact that a final judgment adjudicating that consenting defendant is in contempt of this Final Judgment has been procured by the United States of America, of the fact that such final judgment is not subject to further appeal, and of the monetary amount of the penalty imposed upon consenting defendant by reason of such contempt by such final judgment.

In the event of any payment pursuant to the preceding paragraph out of the funds available under the aforementioned letter of credit, consenting defendant shall cause an amount equal to such payment to be added to the remaining balance of said letter of credit so that the sum of one hundred twenty-five thousand dollars (\$125,000.00) shall again be available thereunder as security for the satisfaction of any further final judgment as contemplated by this Section for ten (10) years from the date of entry of this Final Judgment; provided, however, that in no event shall the United States of America be entitled to payment under said letter of credit of any amount in excess of one hundred twenty-five thousand dollars (\$125,000.00) by reason of any one final judgment.

X

[Retention of Jurisdiction]

Jurisdiction is retained for the purpose of enabling either party 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 of any of the provisions thereof, and for the enforcement of compliance with and the punishment of any violations thereof.

XI

[Public Interest]

Entry of this Final Judgment is in the public interest.