

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. DeBeers Industrial Diamond Division Limited, Anco Diamond Abrasives Corp., and Diamond Abrasives Corp., U.S. District Court, S.D. New York, 1976-1 Trade Cases ¶60,825, (Mar. 19, 1976)

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United States v. DeBeers Industrial Diamond Division Limited, Anco Diamond Abrasives Corp., and Diamond Abrasives Corp.

1976-1 Trade Cases ¶60,825. U.S. District Court, S.D. New York. Civil Action No. 74 Civ. 5389. Entered March 19, 1976. (Competitive impact statement and other matters filed with settlement: 40 *Federal Register* 59455). Case No. 2426, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing—Diamond Grit—Selling Prices—Allocation of Territories, Markets or Customers—Collusive Bidding—Consent Decree.—A South African supplier and two United States distributors of diamond grit were prohibited by consent decree from agreeing on prices; allocating territories, markets or customers for sale, processing or purchase; or submitting collusive or rigged bids, all with respect to diamond grit.

Price Fixing—Price Information—Meeting Restriction and Report Requirement—Consent Decree.—A South African supplier and two United States distributors of diamond grit were prohibited by consent decree for a five year period from attending any meeting sponsored by the supplier for its distributors not dealing exclusively with technical matters concerning development and application of diamond materials and were required during this five year period to file periodic affidavits with the government describing all subjects relating to sale or purchase of diamond grit discussed at any such meeting.

Refusal to Deal—Diamond Grit—Customer Selection—Discrimination—Consent Decree.—A South African supplier and two United States distributors of diamond grit were prohibited by consent decree for a five year period from discriminating against any person who meets reasonable commercial standards applied to other customers; except that in the event of short supply they were permitted to allocate supplies upon a reasonable and nondiscriminatory basis, taking into account such factors as customers' past purchases from them.

For plaintiff: Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, Charles F. B. McAleer, Joel Davidow, Richard L. Daerr, Jr., Stephen P. Kilgriff, Roger A. Morrison, and James A. Gilbert, Attys., Antitrust Div., Dept. of Justice.

For defendants: Ronald S. Daniels, of Townley, Updike, Carter & Rodgers, for Diamond Abrasives Corp.; Philip H. Schaeffer, of Paskus, Gordon & Hyman, for Anco Diamond Abrasives Corp.

Final Judgment

GAGLIARDI, D. J.: Plaintiff, United States of America, having filed its complaint herein on December 10, 1974, and plaintiff and the consenting defendants Anco Diamond Abrasives Corporation and Diamond Abrasives Corporation, by their attorneys, 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 the plaintiff's claims asserted in said complaint against said 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 any issue of fact or law herein, and upon the consent of plaintiff and of said 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. 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 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" or "Affiliate" shall mean any person controlled by a consenting defendant or one in which 50 percent or more of the voting rights is owned or controlled by a consenting defendant or by its majority shareholders.
- (D) "DeBeers" means defendant DeBeers Industrial Diamond Division Limited and its parent companies, subsidiaries and affiliates.
- (E) "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 the consenting defendants shall also apply to each of their officers, directors, agents and employees, their subsidiaries, successors and assigns, and to all other persons in active concert or participation with such consenting defendants who shall have received actual notice of this Final Judgment by personal service or otherwise. This 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 affect the foreign or domestic commerce of the United States, except sales by a 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; Allocation; Bids*]

Each 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 other person to:
 - (1) Fix, maintain or stabilize the price for the sale of diamond grit to any third person;
 - (2) Allocate, limit or divide territories, markets or customers for the sale, production, processing or purchase of diamond grit;

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

(B) For a period of five years, permitting attendance by any representative of consenting defendant at any conference, meeting or seminar sponsored by DeBeers 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 diamond materials.

V.

[*Affidavits of Discussions*]

For a period of five years from the date of entry of this Final Judgment, consenting defendants are each 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 or purchase of diamond grit discussed by or communicated to the participants at any meeting, conference or seminar sponsored by DeBeers for its diamond grit distributors.

VI.

[*Discrimination*]

For a period of five years from the date of entry of this Final Judgment, so long as such consenting defendant is selling or offering for sale diamond grit in the United States, such consenting defendant is prohibited from refusing to sell to any person falling within any class to which such consenting defendant is then selling, who meets the credit and reasonable commercial standards applied to its other customers, upon the written request of such person, if a supply of such diamond grit is available in the form desired; except that, in the event of short supply of any type of diamond grit, such consenting defendant shall allocate supplies upon a reasonable and nondiscriminatory basis, taking into account such factors as historical purchases from consenting defendant.

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 such consenting defendant made to its principal office, duly authorized representatives of the Department of Justice shall be permitted:

(A) Access to such 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 such 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 such consenting defendant, and without restraint or interference from it, to interview at such 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, 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 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.

[*Retention of Jurisdiction*]

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 of any of the provisions thereof, and for the enforcement of compliance with and the punishment of any violations thereof.

IX.

Entry of this Final Judgment is in the public interest.