

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Aluminum Company of America, Anaconda Wire and Cable Company, General Cable Corporation, Kaiser Aluminum & Chemical Sales, Inc., Olin Mathieson Chemical Corporation, and Reynolds Metals Company., U.S. District Court, E.D. Pennsylvania, 1964 Trade Cases ¶71,251, (Nov. 9, 1964)

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United States v. Aluminum Company of America, Anaconda Wire and Cable Company, General Cable Corporation, Kaiser Aluminum & Chemical Sales, Inc., Olin Mathieson Chemical Corporation, and Reynolds Metals Company.

1964 Trade Cases ¶71,251. U.S. District Court, E.D. Pennsylvania. Civil Action No. 35353. Entered November 9, 1964. Case No. 1790 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Bid Rigging—Aluminum Conductor Cable—Consent Judgment.—Six manufacturers of aluminum conductor cable were prohibited under the terms of a consent judgment from fixing prices, rigging bids or restricting purchases or sales by distributors of aluminum conductor cable and required for a period of five years to submit non-collusion statements with bids to government agencies.

For the plaintiff: Robert F. Kennedy, Attorney General, Washington, D. C.; William H. Orrick, Jr., Assistant Attorney General, Washington, D. C.; Harry G. Sklarsky, Department of Justice, Chief of Field Operations, Washington, D. C.; Drew J. T. O'Keefe, United States Attorney, Philadelphia, Pa.; Donald G. Balthis, John E. Sarbaugh, John J. Hughes, Richard M. Walker, Stewart J. Miller, Antitrust Division, Philadelphia, Pa.

For the defendants: H. Francis DeLone, Dechert, Price & Rhoads, Philadelphia, Pa.; Albert C. Bickford, Whitney North Seymour, Jr., H. Robert. Limmer, Simpson, Thacher & Bartlett, New York, N. Y. for General Cable Corp.; Edwin P. Rome, Blank, Rudenko, Klaus & Rome, Philadelphia, Pa. and Gordon Johnson, Thelen, Marrin, Johnson & Bridges, San Francisco, Calif. for Kaiser Aluminum & Chemical Sales, Inc.; Joseph W. Swain, Jr., Ralph W. Brenner, Hugh G. Moulton, Montgomery, McCracken, Walker & Rhoads, Philadelphia, Pa.; Donald L. Deming, Chadbourne, Parke, Whiteside & Wolff, New York, N. Y., Richard B. Steinmetz, Jr., New York, N. Y. for Anaconda Wire & Cable Co.; George P. Williams, III, Schnader, Harrison, Segal & Lewis, Philadelphia, Pa., John W. Barnum, Cravath, Swaine & Moore, New York, N. Y. for Olin Mathieson Chemical Corp.; Thomas D. McBride, Raymond J. Bradley, Wolf, Block, Schorr & Solis-Cohen, Philadelphia, Pa. for Reynolds Metals Co.; and Philip H. Strubing, Pepper, Hamilton & Scheetz, Philadelphia, Pa. for Aluminum Co. of America.

Partial Final Judgment

CLARY, District Judge: Plaintiff, United States of America, having filed its complaint herein on March 19, 1964, and the consenting defendants having appeared by their attorneys, and said defendants by their attorneys having consented to the entry of this Partial Final Judgment pursuant to a stipulation entered into October, 1964, without trial or adjudication of any issue of fact or law herein, and without this judgment constituting any evidence or admission by any party in respect to any issue of fact or law herein;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties as aforesaid it is hereby

Ordered, adjudged and decreed as follows:

I

[*Sherman Act*]

This Court has jurisdiction of the subject matter hereof and of each party consenting hereto. The complaint herein having presented more than, one claim for relief, the Court hereby determines that there is no just reason for delay and directs entry of this judgment as to the claim made in Count ONE. The complaint in Count ONE states a claim for relief against the defendants consenting hereto 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. Neither the making nor entry of this judgment shall be deemed to estop or prejudice the Plaintiff in prosecuting and recovering on, or any defendant consenting hereto in opposing, the claims made in Counts TWO and THREE of the complaint herein,

II

[*Definitions*]

As used in this judgment:

- (A) "Person" shall mean an individual, partnership, firm, association, corporation or other legal or business entity;
- (B) "Aluminum conductor cable*" shall mean bare and covered wire and cable which is made in whole or in part of electrical conductor grade aluminum, and which is or may be used in the transmission or distribution of electricity. Examples of aluminum conductor cable are aluminum cable steel reinforced (ACSR), all aluminum cable (AAC), and all aluminum alloy cable (AAAC). Aluminum conductor cable is sometimes coated with a cover made of plastic, rubber or other materials;
- (C) "United States" shall mean the United States of America, its territories and possessions.

III

[*Applicability*]

The provisions of this judgment applicable to any consenting defendant shall also apply to each of its subsidiaries, successors, assigns, officers, directors, agents and employees, and to all other persons in active concert or participation with such defendant who shall have received actual notice of this judgment by personal service or otherwise, but shall not apply to transactions solely between a consenting defendant and its officers, directors, employees, parent company and subsidiaries, or any of them, when acting in such capacity. This judgment shall not apply to conduct outside of the United States, unless such conduct substantially affects the foreign or domestic commerce of the United States but shall apply to sales by any consenting defendant to, or for the stated use of the plaintiff or any instrumentality or agency thereof.

IV

[*Price Fixing, Bid Rigging*]

Each of the consenting defendants is enjoined and restrained from directly or indirectly entering into, adhering to or claiming any right under any contract, agreement, arrangement, understanding, plan or program with any other manufacturer or seller of aluminum conductor cable to:

- (A) Fix, maintain, stabilize, adopt or adhere to prices or other terms and conditions for the sale of aluminum conductor cable to any third person;
- (B) Submit collusive or rigged bids or quotations for the sale of aluminum conductor cable to any third person; or
- (C) Limit, restrict or prevent any third person who is a seller of aluminum conductor cable in purchasing any such cable from, or in selling any such cable to, any person or class of persons.

V

[*Exchange of Information*]

Each of the consenting defendants is enjoined and restrained from communicating to or exchanging with any manufacturer or seller of aluminum conductor cable any information relating to prices, terms or conditions

applicable to aluminum conductor cable except with or after the release of such information publicly or to the trade generally, or except in connection with any bona fide purchase or sale transaction between them.

VI

[*Bid Certification Required*]

Each of the consenting defendants is ordered and directed, for a period of five years from the date of entry of this judgment:

(A) In connection with any sealed bid submitted by it to any federal, state or local government, authority, agency or instrumentality for the sale of aluminum conductor cable, to submit with such bid a written statement relating to such sealed bid in substantially the form set forth in the Appendix hereto or containing the substance thereof.

(B) To certify in writing, through one of its officers, at the time of every succeeding change authorized by such officer in published prices, terms, or conditions of sale of aluminum conductor cable, that said change was independently arrived at by said defendant and was not the result of any agreement or understanding with any competitor; and further that each consenting defendant retain in its files the aforesaid certifications which shall be made available to plaintiff for inspection upon reasonable written demand.

VII

[*Permissive Provisions*]

Nothing contained in this judgment shall be deemed to prohibit any of the consenting defendants:

(A) From formulating, submitting, contracting for or performing, in combination with any other seller of aluminum conductor cable, other than a manufacturer thereof or a defendant, a bona fide joint bid or quotation or contract which is denominated as such or is known to the purchaser to be such; or

(B) From negotiating for, entering into, creating, carrying out or implementing by lawful conduct any otherwise lawful contract, agreement, arrangement, understanding, plan or program with any bona fide agent, other than a manufacturer of aluminum conductor cable, for the sale of any aluminum conductor cable on behalf of such consenting defendant.

VIII

[*Compliance*]

Each of the consenting defendants is ordered and directed, within 60 days from the date of entry of this judgment, to furnish a copy of this judgment to each "of its officers and to each of its area, regional and branch managers and assistant managers of sales of aluminum conductor cable in the United States, and to retain in its files for a period of five years from the date of this judgment a written statement signed within said 60 days by each such employee setting forth the date he received a copy of this judgment, his title, his place of employment and the name of his immediate supervisor.

IX

[*Inspection*]

For the purpose of determining or securing compliance with this judgment, duly authorized representatives of the Department of Justice shall, 6n written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any consenting defendant, made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Reasonable access, during office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, relating to any matters contained in this judgment; and

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

Upon such written request such defendant shall submit such reports in writing with respect to any of the matters contained in this judgment as may from time to time be necessary and requested for the enforcement of this judgment.

No information obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to anyone other than a duly authorized representative of the Executive Branch of the plaintiff, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this judgment or as otherwise required by law.

X

[Jurisdiction Retained]

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this 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 judgment, for the modification or termination of any of the provisions hereof, for the enforcement of compliance herewith and for the punishment of violations hereof.

Appendix

The undersigned hereby certifies that, to his best knowledge and belief, the annexed bid has not been prepared in collusion with any other manufacturer or seller of aluminum conductor cable and that the prices, terms or conditions thereof have not been communicated by or on behalf of the bidder to any such person and will not be communicated to any such person prior to the official opening of said bid, in violation of the Partial Final Judgment in Civil Action No. 35353 entered by the United States District Court for the Eastern District of Pennsylvania.