

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Rice Growers Association of California, Pacific International Rice Mills, Inc., Wallace and Anderson, Inc., and Yolo Petroleum, Inc., Trustee for PIRMI Liquidating Trust., U.S. District Court, E.D. California, 1986-2 Trade Cases ¶67,314, (Sept. 17, 1986)

Federal Antitrust Cases

Civil No. 84-1066 EJG

Case No. 3210

Trade Regulation Reporter - Trade Cases (1932 - 1992) ¶67,314

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United States v. Rice Growers Association of California, Pacific International Rice Mills, Inc., Wallace and Anderson, Inc., and Yolo Petroleum, Inc., Trustee for PIRMI Liquidating Trust.

1986-2 Trade Cases ¶67,314. U.S. District Court, E.D. California, Civil No. 84-1066 EJG, Entered September 17, 1986, Case No. 3210, Antitrust Division, Department of Justice.

Clayton Act

Headnote

Acquisitions: Rice Milling Facilities: Divestiture.—

Pursuant to a ruling ([1986-2 Trade Cases ¶67,288](#)) that the acquisition of the third largest rice mill operator in California by the largest such company unlawfully eliminated competition in the market for the purchasing of milling paddy rice grown in the state, divestiture of acquired assets was ordered and a trustee appointed for that purpose.

For plaintiff: Howard J. Parker and Barbara J. Nelson, Antitrust Div., Dept. of Justice, San Francisco, Cal.

For defendants: Stephen J. Boutin, of Downey, Brand, Seymour and Rohwer, Sacramento, Cal., for Rice Growers Assn. of Cal. and Pacific Internatl. Rice Mills, Inc., Richard Haas, of Lasky, Haas, Cohler & Munter, San Francisco, Cal., Kent N. Calfee, of Calfee & Young, Woodland, Cal., for Wallace & Anderson, Inc. and Yolo Petroleum.

Final Judgment

Garcia, D. J.: This action having come on for trial before the Court, and the issues having been duly tried and a decision having been rendered, it is hereby,

Ordered, Adjudged, and Decreed as follows:

I.

Defendant Rice Growers Association of California (RGA) violated [Section 7 of the Clayton Act](#), 15 U. S. C. §18, by acquiring the assets of Pacific International Rice Mills, Inc. (PIRMI).

II.

Defendants Wallace and Anderson, Inc. and Yolo Petroleum, Inc. are dismissed from this action with prejudice.

III.

Relief is ordered as set forth in the Relief Order previously entered (*reported below*.—CCH).

IV.

RGA is enjoined and restrained for a period of ten years from acquiring any stock or other ownership interest in, merging or combining with, or acquiring any assets worth in excess of \$100,000 except rice from, any person engaged in the business of purchasing or milling California-grown rice without first obtaining the consent of plaintiff or, if plaintiff objects, the approval of the Court upon establishing, by a preponderance of the evidence, that the acquisition will not lessen competition or tend to create a monopoly in any line of commerce in any section of the country.

V.

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

VI.

Defendant RGA shall bear its own costs and plaintiff's costs. Defendants Wallace and Anderson, Inc. and Yolo Petroleum, Inc. shall bear their own costs.

VII.

This Final Judgment and the Relief Order shall expire on the tenth anniversary of the date of entry of this Final Judgment or, if a notice of appeal is filed, on the tenth anniversary of the date of the issuance of the mandate by the Court of Appeals or other final resolution of the appeal, or with respect to any particular provision, on any earlier date specified.

Relief Order

In accordance with the memorandum of decision issued this same date [[1986-2 Trade Cases ¶67,288](#)], it is hereby, Ordered as follows:

I.

[Applicability]

The provisions of this Relief Order shall apply to defendant Rice Growers Association of California (RGA); to its subsidiaries, successors, and assigns; and to all other persons in active concert or participation with RGA who shall have received actual notice of this relief order by personal service or otherwise.

II.

[Appointment of Trustee]

(A) The court finds it appropriate to and will appoint a trustee, in accordance with Sections III and IV of this relief order, to effect the divestiture of the assets and related business that RGA acquired from Pacific International Rice Mills, Inc. (PIRMI) as a result of the agreement dated July 18, 1984 (PIRMI business). The trustee's main endeavor shall be to accomplish prompt and full divestiture of the PIRMI business as an ongoing business concern in order to preserve and restore competition in the acquisition for milling of California-grown rice. Divestiture shall be made to a purchaser or purchasers who shall reasonably demonstrate that (1) the purchase is for the purpose of competing effectively in the acquisition for milling of California-grown rice, and (2) they will have the managerial, operational, and financial capability after the divestiture to compete effectively in the acquisition for milling of California-grown rice.

(B) Pending such divestiture, the trustee shall manage the PIRMI business and preserve it as an ongoing business concern independent of RGA.

(C) To accomplish these ends, the trustee shall have the powers set forth in Sections V, IX(G), and IX(H) of this relief order.

III.

[Trustee]

The parties have jointly nominated Curt M. Rocca for the position of trustee. Mr. Rocca's resume shows active participation in the rice industry since 1949. He was the founder of and chief executive officer for PIRMI from 1953 through 1982. He is now the president of Pacific Rice Products in Berkeley, California and is well qualified to serve as a trustee. Accordingly, he is hereby appointed as trustee for PIRMI for the purposes of effectuating this order. His appointment shall become effective in 20 days from the filing of this order. Any objections as to his qualifications shall be submitted within 10 days from the filing of this order. If no such objections are filed, his appointment will become effective upon the close of business of the 20th day without further order of the court.

IV.

[Costs and Compensation]

The trustee shall serve at the cost and expense of RGA, on such terms and conditions as the court may prescribe. The compensation of the trustee shall be based on a fee arrangement, approved by the court, providing the trustee with an incentive based on the price at which he sells the PIRMI business and the promptness of the divestiture. The trustee shall account for all monies derived from the sale of the PIRMI business and all costs and expenses so incurred. After approval by the court of the trustee's accounting, including fees for his services, all remaining monies shall be paid to RGA and the trust shall then be terminated.

V.

[Powers]

(A) The trustee shall have all such powers with respect to the PIRMI business as are necessary to accomplish divestiture in accordance with this relief order, including but not limited to the power to retain investment bankers, business opportunity brokers, accountants, appraisers, consultants, attorneys, and any other persons reasonably needed to assist in the operation of the PIRMI business and the promotion, analysis, or execution of divestiture. Subject to the provisions of Section VIII of this final judgment, the trustee shall have the power to direct RGA to convey to a purchaser, or himself to convey if he has taken title pursuant to Section IX(H) of this relief order, the assets and liabilities, or any portion thereof, that are part of the PIRMI business. The trustee shall have the power to select and designate the particular assets and liabilities to be conveyed as part of the PIRMI business. The trustee shall have the power to exclude liabilities of the PIRMI business from the conveyance, in which case those liabilities will be paid, or retained and assumed, by RGA. RGA shall retain no security or other interest in the PIRMI business.

(B) The trustee shall sell the PIRMI business at such price and on such terms as are then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section VIII of this relief order. The trustee shall have authority to sell the PIRMI business by any reasonable means. The PIRMI business shall not be sold to a person whose purchase of the PIRMI business may substantially lessen competition, including Farmers Rice Cooperative and Early California Industries.

VI.

[Assistance]

RGA shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee shall have full and complete access to the personnel, books, records, and facilities of the PIRMI business, and RGA shall develop such financial or other information relevant to the PIRMI business as the trustee may request. RGA shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. RGA's obligation under this paragraph is to assist the trustee in the divestiture of PIRMI, and not in the operation of PIRMI.

VII.

[Reports]

After his appointment, the trustee shall file monthly reports with the parties and the court setting forth the trustee's efforts to accomplish divestiture and the names and addresses of all persons who have expressed interest in purchasing the PIRMI business. If the trustee has not accomplished such divestiture within one year after his appointment, the trustee shall promptly file with the parties and the court a report setting forth (i) the trustee's efforts to accomplish the required divestiture, (ii) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (iii) the trustee's recommendations. The parties shall then each have the right to be heard and to make additional recommendations consistent with the purpose of this relief order. The court shall thereafter enter such orders as it shall deem appropriate in order to effectuate relief in this case.

VIII.

[Notice of Divestiture]

At least 45 days prior to the scheduled closing date of any proposed divestiture, the trustee shall notify the plaintiff, RGA, and the court in writing of the proposed sale. The notice shall set forth the details of the proposed transaction. It shall also list the name, address, and telephone number of each person not previously identified who expressed an interest in acquiring the PIRMI business together with a description of the communications with such persons. Within ten days of receipt by a party of such notice, it may make reasonable requests from the trustee or the other party for additional information concerning the proposed divestiture and the proposed purchaser. Such additional information shall be furnished within 15 days of the receipt of the request, unless the parties agree otherwise. If the plaintiff or RGA objects to the proposed divestiture, within 35 days after receipt of the notice it shall notify the court, the trustee, and the other party of its objection and the basis for the objection. RGA may not object to a sale of the PIRMI business on any ground except malfeasance, a breach of fiduciary duty, or a clear abuse of discretion. If no party objects to the proposed divestiture within the specified period, the transaction may be consummated. If a party does object to the proposed divestiture within the specified period, the transaction shall not be consummated, unless the court overrules the objection and approves the divestiture.

IX.

[Business Pending Divestiture]

Pending divestiture of the PIRMI business,

(A) All of PIRMI's physical facilities, assets (including but not limited to its Kokuho Rose joint venture), funds, profits, business organization, employees, accounts, distribution network, and supplier and customer information shall remain intact and be held separate and apart from RGA, and shall not be commingled, integrated, or consolidated into RGA's other business operations in any way;

(B) No person who was an RGA and not a PIRMI employee immediately before July 18, 1984 shall supervise, act for, or otherwise participate for or on behalf of the PIRMI business in the latter's business decisions or in the conduct of its business, and no director, officer, or employee of RGA shall concurrently act or serve as a director, officer, or employee of the PIRMI business nor have access to any of PIRMI's competitively sensitive business information;

(C) Subject to the provisions of any public law requiring cooperatives to accept applications for membership, RGA shall not compel, urge, solicit, advise, or recommend that rice growers who have historically sold rice to PIRMI since July 18, 1983, and who had not joined RGA by July 18, 1984, to become members of RGA; any sales contract entered into by the PIRMI business, with a rice grower who has historically supplied PIRMI, for delivery of rice to the PIRMI business, will be freely assigned to whomever purchases the PIRMI business;

(D) Other rice millers doing business in California shall continue to be granted access to PIRMI's storage and loading facilities in the Sacramento-Yolo Port District, on the same terms and conditions and in the same manner as was PIRMI's practice prior to July 18, 1984;

(E) The PIRMI business shall not enter into any contract, joint venture, or other arrangement with any other part of RGA or with Connell Rice and Sugar Company, or anyone known by the PIRMI business to be in active concert, participation, or agreement with RGA or Connell Rice and Sugar Company, for the sale of any paddy or milled rice for export, or for any other purpose, without prior approval by the plaintiff or, failing plaintiff's approval, by the court;

(F) No asset of the PIRMI business worth more than \$5,000, except rice and rice products sold in the normal course of business, shall be conveyed, transferred, sold, pledged, or encumbered without the approval of the trustee or, before the trustee is appointed, the plaintiff or the court;

(G) Unless and until the trustee obtains from a lending institution a line of credit for the operation of the PIRMI business that the trustee deems satisfactory, the trustee shall have the power to require RGA to continue loaning the PIRMI business money, as RGA did from September 1984 to June 1985, at the prime rate of interest established by Union Bank (Los Angeles), for the purpose of maintaining the present operations but not long term plant improvements of the PIRMI business;

(H) The trustee shall have all such powers with respect to the PIRMI business as are necessary to manage and control the business, and preserve it as an ongoing business concern, independent of RGA, including but not limited to the power to borrow money, encumber assets, enter into contracts, make capital expenditures, establish operating budgets, hire and discharge employees, and direct RGA to convey to the trustee the assets and liabilities, or a portion of them, that the trustee has selected and designated as part of the PIRMI business; the trustee also shall have the power to name, and replace a will, all the members of the Board of Directors of the PIRMI business;

(I) RGA and the PIRMI business shall not engage in any conduct with each other that would violate [Section 1 of the Sherman Act](#), 15 U. S. C. §1, if they were not commonly owned.

X.

[Compliance]

For the purposes of determining or securing compliance with this relief order, plaintiff, during regular business hours, may visit and inspect the PIRMI business facilities and interview PIRMI and RGA employees, and RGA shall make available to plaintiff all books, ledgers, accounts, correspondence, memoranda, and other records and documents relevant to the PIRMI business for plaintiff's inspection and copying.

XI.

[Appeals]

Upon the filing of a valid notice of appeal in this matter, that portion of Section V of this relief order and any other provision of this relief order directing the trustee to divest the PIRMI business shall be stayed pending the issuance of the mandate of the Court of Appeals or other final resolution of the appeal. All other provisions of this relief order, including those requiring the PIRMI business to be held separate and those pertaining to the appointment and management authority of the trustee, shall remain in effect.

It Is So Ordered.