

United States District Court
FOR THE SOUTHERN DISTRICT OF NEW YORK

CIVIL No. 88-249

UNITED STATES OF AMERICA,
Plaintiff,
against
AMERICAN SMELTING AND REFINING COMPANY and
ST. JOSEPH LEAD COMPANY,
Defendants.

CONSENT JUDGMENT

Filed: October 11, 1957.

United States District Court
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

against

Civil No. 88-249

AMERICAN SMELTING AND REFINING COM-
PANY and ST. JOSEPH LEAD COMPANY,
Defendants.

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on the 9th day of October, 1953, and defendant, American Smelting and Refining Company, by its attorneys, having filed its answer to the complaint denying the material allegations thereof; and plaintiff and said defendant, 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 either plaintiff or said defendant, in respect to any such issue;

Now, therefore, before any testimony has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon consent, as aforesaid, of each said party hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I.

This Court has jurisdiction of the subject matter hereof and of the parties signatory hereto. The complaint states

a claim for relief against defendant American Smelting and Refining Company under Sections 1 and 2 of the Act of Congress of July 2, 1890, 26 Stat. 209, entitled "An act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sherman Act, as amended.

II.

As used in this Final Judgment:

(A) "ASR" shall mean American Smelting and Refining Company, a corporation organized and existing under the laws of the State of New Jersey;

(B) "St. Joe" shall mean St. Joseph Lead Company, a corporation organized and existing under the laws of the State of New York;

(C) "Person" shall mean any individual, partnership, firm, corporation, association, trust or other legal entity;

(D) "United States" shall mean the continental United States, its territories and possessions;

(E) "Primary lead smelter" shall mean a lead processing plant, the principal lead-bearing raw material for which is lead ores and/or lead concentrates; and "domestic primary lead smelter" shall mean a primary lead smelter located within the United States;

(F) "Lead bullion" shall mean the unrefined metallic lead product of a primary lead smelter produced from ores and concentrates;

(G) "Primary lead refinery" shall mean a lead processing plant, the principal lead-bearing raw material for which

is lead bullion and the principal product of which is refined lead; and "domestic primary lead refinery" shall mean a primary lead refinery located within the United States;

(H) "Primary lead" shall mean refined lead produced from lead bullion at primary lead refineries; and "domestic primary lead" shall mean primary lead produced at domestic primary lead refineries excluding lead processed under United States custom bond and exported;

(I) "Acquisition of any domestic primary lead smelter or of any domestic primary lead refinery" shall mean the obtaining of control of any such smelter or refinery, whether such control is obtained directly or indirectly, and whether such control is obtained through purchase of assets, stock or other securities, lease, management contract, statutory consolidation or statutory merger, or through any other similar means;

(J) "Subsidiary" shall mean a corporation (1) more than 50 percent of whose stock entitled to vote upon election of directors (other than stock whose right to vote is dependent solely on the non-payment of dividends or other default) is, directly or indirectly, owned by ASR, or (2) more than half of whose directors are officers, directors, or nominees of ASR.

III.

The provisions of this Final Judgment applicable to ASR shall apply to ASR, its directors, officers, agents, servants, employees, subsidiaries, successors and assigns, and to those persons in active concert or active participation with it who shall have received actual notice of this Final Judgment by personal service or otherwise, but shall

not apply to transactions between ASR and its directors, officers, agents, servants, employees, subsidiaries, successors and assigns, or any of them. No provision of this Final Judgment shall prevent ASR from taking action, or refraining from taking action, officially authorized or directed by the United States Government; nor shall any provision of this Final Judgment prevent ASR from taking action to induce the United States Government to take action or to refrain from taking action.

IV.

Defendant ASR is enjoined and restrained from, directly or indirectly, entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan or program with any person engaged in the United States in the mining, smelting, refining or sale of primary lead to fix, determine, maintain or adhere to any price or prices, price differential, price discount or other term or condition for the sale in the United States of primary lead or any grade thereof to third persons. Without limiting in any manner the generality of the foregoing defendant ASR is specifically enjoined and restrained from exchanging information or consulting with St. Joe with respect to any specific future change or changes in the price or prices of primary lead to be made by either company.

V.

Defendant ASR is enjoined and restrained from directly or indirectly, entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan or program with any other person engaged in the mining, smelting, refining or sale of primary lead, to reduce, restrict,

limit or prevent the mining, smelting, refining or sale of primary lead produced in the United States.

VI.

Defendant ASR is enjoined and restrained from directly or indirectly, entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan or program, whether in the nature of a cartel or other non-competitive arrangement, with any other person (except a foreign government) engaged in the mining, smelting, refining or sale of primary lead (a) to restrict the import into, or export from, the United States of lead ore, lead concentrates, lead bullion, or primary lead or (b) to fix, establish or maintain any price or prices for the sale of lead ore, lead concentrates, lead bullion, or primary lead in the domestic or foreign commerce of the United States; provided, that this Section VI shall not apply to any act in a foreign country which defendant ASR can show was officially required of defendant ASR by the government thereof.

VII.

(A) Defendant ASR is ordered and directed to cancel and terminate forthwith the contract between ASR and St. Joe dated November 26, 1951.

(B) Defendant ASR is enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, any contract, agreement or understanding with St. Joe which (1) fixes the maximum tonnage of ores or concentrates which St. Joe may process at its plant at Herculaneum, Missouri, or at any other plant; or (2) requires St. Joe to give ASR any forecast of the rate

of production at its mines or of its receipts of ores, concentrates or other lead-bearing materials from other sources, or requires St. Joe to inform ASR of its own production of concentrates, or the lead content thereof, or its receipts of ores, concentrates or lead-bearing materials from other sources, or the lead content thereof, except that nothing in this clause (2) of Section VII (B) shall prevent St. Joe from giving reasonable notice to ASR of proposed rates of shipment from St. Joe to ASR's plant at Alton, Illinois; or (3) requires St. Joe to have processed at ASR's plant at Alton, Illinois, in excess of 3,750 tons per month, averaged over a six-month period, of lead contained in ores or concentrates. Under any contract between ASR and St. Joe for the processing of lead ores and concentrates at ASR's plant at Alton, Illinois, St. Joe shall not be bound for a period in excess of two years.

(C) Unless within seven years from the date of entry of this Final Judgment defendant ASR either ceases to process at its plant at Alton, Illinois, lead ores or concentrates mined by St. Joe or obtains the consent of the Department of Justice to continue such processing, the plaintiff may apply to this Court for an order directing that such processing shall cease, and upon such application the issue shall be whether, under the circumstances then prevailing, such processing, pursuant to a contract not inconsistent with Subdivision B of this Section VII, may substantially lessen competition or tend to create a monopoly in any line of commerce in any section of the United States; and upon such issue the defendant ASR shall have the burden of proof. Any order directing that such processing shall cease shall provide such time, not to exceed three

years, as reasonably may be required by St. Joe to make other arrangements for such processing.

VIII.

(A) Defendant ASR is enjoined and restrained from the acquisition of any domestic primary lead smelter or any domestic primary lead refinery existing on the date of the entry of this Final Judgment.

(B) Defendant ASR is enjoined and restrained from entering into:

(1) Any toll contract for smelting lead ores or concentrates from sources whose lead ores or concentrates are now being smelted at any domestic primary lead smelter owned by a person other than ASR, which tends substantially to result in the permanent cessation of operations by said domestic primary lead smelter; or

(2) Any toll contract for refining lead bullion from sources whose lead bullion is now being refined at any domestic primary lead refinery owned by a person other than ASR, which tends substantially to result in the permanent cessation of operations by said domestic primary lead refinery.

(C) Nothing in this Section VIII shall prevent ASR from making application to this Court, upon notice to the plaintiff, at any time under Subdivision (B) above, or after the expiration of ten (10) years after the date of this Final Judgment under Subdivision (A) above, for permission of this Court to take action otherwise forbidden by this Section VIII and such permission may be granted by this Court

upon a satisfactory showing to this Court by ASR that the effect of such action will not be substantially to lessen competition or to tend to create a monopoly in any line of commerce in any section of the United States.

IX.

Nothing in this Final Judgment shall prevent plaintiff from applying to this Court for further relief against defendant ASR under Section 2 of the Act of Congress of July 2, 1890, 26 Stat. 209, as amended.

The Court shall rule on any such application in the light of the then prevailing circumstances.

X.

For the purpose of securing compliance with this Final Judgment and for no other purpose, 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 ASR given to its principal office, be permitted (1) reasonable access during the office hours of ASR to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of ASR relating to any of the subject matters contained in this Final Judgment; and (2) subject to the reasonable convenience of ASR but without restraint or interference from it, to interview officers or employees of ASR, who may have counsel present, regarding any such matters; and upon such request ASR shall prepare and submit such reports in writing to the Department of Justice

with respect to matters contained in this Final Judgment as may from time to time be reasonably necessary to the enforcement of this Final Judgment. No information obtained by the means provided in this Section X shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department 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.

XI.

Jurisdiction is retained by this Court for the purpose 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 amendment or modification or termination of any of the provisions thereof, or for the enforcement of compliance therewith or for the punishment of violations thereof.

New York, New York
October 11th, 1957.

s/ SYLVESTER J. RYAN
United States District Judge

We consent to the making and entry of the foregoing
Final Judgment.

For the Plaintiff

s/ VICTOR R. HANSEN
Victor R. Hansen
Assistant Attorney General

s/ WORTH ROWLEY
Worth Rowley

s/ W. D. KILGORE, JR.
William D. Kilgore, Jr.

s/ HARRY N. BURGESS
Harry N. Burgess

s/ ALLEN A. DOBEY
Allen A. Dobey

s/ JOSEPH W. STANLEY
Joseph W. Stanley

s/ JOHN FRICANO
John Fricano

For the Defendant, American Smelting and
Refining Company

s/ CLEARY, GOTTLEB, FRIENDLY & HAMILTON
Cleary, Gottlieb, Friendly & Hamilton
by FOWLER HAMILTON

Judgment entered Oct. 11th, 1957

HERBERT A. CHARLSON,
Clerk.