

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

Plaintiff, :

v. :

W. R. GRACE & CO., :

Defendant. :

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Civil Action No. 72 CIV 414

Filed: January 28, 1972

COMPLAINT

The United States of America, plaintiff, by its attorneys, brings this civil action to obtain equitable relief against the above named defendant, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed under Section 4 of the Act of Congress of July 2, 1890 (15 U.S.C. § 4), as amended, commonly known as the Sherman Act, in order to prevent and restrain the continuing violations by the defendant, as hereinafter alleged, of Sections 1 and 2 of said Act (15 U.S.C. §§ 1 and 2).

2. The defendant W. R. Grace & Co. maintains an office, transacts business, and is found within the Southern District of New York.

II

THE DEFENDANT

3. W. R. Grace & Co. is made the defendant herein. Grace is a corporation organized and existing under the laws of the State of Connecticut with its principal executive offices in New York, New York. For the purpose of this complaint,

"Grace" means W. R. Grace & Co. and its divisions and subsidiaries.

III

TRADE AND COMMERCE

4. Grace, a diversified international company, is the nation's fifth largest producer of chemicals, concentrating on chemical products for the industrial, agricultural, and plastics markets. It also produces flexible packaging materials, converted plastics, pulp and paper, textiles, and numerous consumer products, principally in the apparel and food fields. Grace has interests in oil producing properties in Libya and conducts mining operations in Peru and Bolivia. It operates retail stores, restaurants, and mail order houses and is engaged in the distribution of several product lines as a wholesaler or sales agent. Chemical products accounted for 51 percent of Grace's total sales and operating revenues in 1970.

5. Grace is prominent in several chemical product markets. It is the world's largest producer of sealing compounds for cans, jars, pails, and drums and one of the world's largest suppliers of fertilizers and other products for agriculture. It is also a leading producer of petroleum cracking catalysts, water treatment and pollution-control products and services, polyester resins, and industrial and institutional cleaning compounds.

6. In 1970 Grace had total sales and operating revenues of over \$1.9 billion and assets of over \$1.5 billion.

7. Grace purchases substantial quantities of various commodities, raw materials, equipment, supplies, and services

from numerous other companies. In 1969 these purchases approximated \$425 million. Grace makes substantial purchases from corporations which are purchasers of the type of products produced by Grace.

8. Substantial portions of the commodities, raw materials, equipment, and supplies purchased by Grace are shipped from their place of origin across state lines to their point of use by Grace. Similarly, shipments of chemicals and other products by Grace to these suppliers and to other customers are made in a continuous flow of interstate commerce.

IV

OFFENSES CHARGED

9. Since at least as early as 1962, and continuing to the date of this complaint, defendant has violated Section 1 of the Sherman Act (15 U.S.C. § 1) by entering into combinations involving reciprocal purchasing arrangements with respect to a substantial amount of interstate commerce whereby defendant purchased goods and services from suppliers upon the understanding that said suppliers would purchase goods and services of defendant, in unreasonable restraint of the aforesaid trade and commerce.

10. Since at least as early as 1962, and continuing to the date of this complaint, defendant, through the use of its purchasing power, has violated Section 2 of the Sherman Act (15 U.S.C. § 2) by attempting to monopolize that part of the above described interstate trade and commerce consisting of the requirements of actual and potential suppliers of defendant for products and services sold by defendant.

11. Pursuant to the aforesaid combinations and attempt to monopolize the defendant has done, among other things, the following:

- (a) Adopted a policy of reciprocal purchasing or of purchasing from suppliers who would purchase from the defendant;
- (b) Designated personnel within the corporation with the specific responsibility of coordinating trade relations to permit and promote the practice of reciprocal purchasing;
- (c) Compiled and coordinated comparative purchase and sales data and other information relating to its customers and suppliers;
- (d) Utilized this information to determine which suppliers should be favored and the extent to which they should be permitted to participate in supplying the defendant's requirements of goods and services;
- (e) Discussed with actual and potential suppliers and customers their sales and purchase positions relative to defendant;
- (f) Purchased goods and services from certain suppliers on the understanding that such suppliers would purchase goods and services from defendant;
and
- (g) Used purchases from particular suppliers by one subsidiary or division of defendant to promote sales to such suppliers by another subsidiary or division.

V

EFFECTS

12. The aforesaid violations by defendant have had the following effects, among others:

- (a) Competitors of defendant in the sale of various goods and services have been foreclosed from selling substantial quantities thereof to firms that are supplier-customers of defendant; and
- (b) Actual and potential suppliers of various goods and services purchased by defendant have been foreclosed from selling substantial quantities of such goods and services to defendant.

PRAYER

WHEREFORE, plaintiff prays:

1. That the aforesaid combinations between defendant and its suppliers involving reciprocal purchasing arrangements be adjudged and decreed to be in violation of Section 1 of the Sherman Act.
2. That the aforesaid attempt to monopolize be adjudged and decreed to be in violation of Section 2 of the Sherman Act.
3. That defendant and its officers, directors, agents, and all other persons acting on behalf of defendant, be perpetually enjoined from:
 - (a) Entering into or adhering to any contract, agreement, or understanding with any actual or potential customer or supplier involving reciprocal purchasing arrangements;

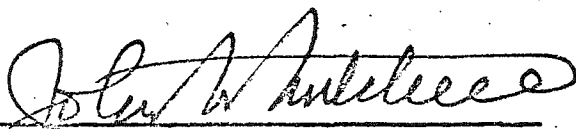
- (b) Communicating to actual or potential customers or suppliers that it will place its purchases with or give preference to suppliers who purchase from defendant;
- (c) Communicating to actual or potential customers or suppliers statistics comparing purchases of goods and services by defendant from such companies with sales by defendant to such companies;
- (d) Continuing the practice of compiling statistics which compare defendant's purchase of goods and services from companies with sales by defendant to such companies;
- (e) Transmitting to personnel with sales responsibilities information concerning purchases by defendant from particular suppliers, transmitting to personnel with purchasing responsibilities information concerning sales by defendant to particular companies, or otherwise implementing any program involving reciprocity; and
- (f) Utilizing purchases by one Grace subsidiary or division from particular suppliers to promote sales to such suppliers by another Grace subsidiary or division.

4. That this Court order defendant to abolish any duties that are assigned to any of its officials or employees which relate to the conduct or effectuation of a reciprocity program.

5. That this Court order defendant to advise all of its suppliers by written notice that defendant no longer engages in reciprocal purchasing and to furnish a copy of the Final Order of this Court to such suppliers.


6. That plaintiff have such other relief as the nature of the case may require and the Court may deem just and proper.

7. That plaintiff recover the costs of this action.



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