

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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| -----X | |
| UNITED STATES OF AMERICA, | : |
| | : |
| Plaintiff, | : |
| | : |
| v. | : |
| | : |
| CONTINENTAL CAN COMPANY, INC., | : |
| | : |
| Defendant. | : |
| -----X | |

Civil Action No. 74 Civ. 278

Filed: June 27, 1974

Entered: July 29, 1974

FINAL JUDGMENT

Plaintiff, United States of America having filed its Complaint herein on June 27, 1974 and plaintiff and defendant, by their respective 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 admission by any party with respect to any such 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 hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter herein and of the parties consenting hereto. The Complaint states claims upon which relief may be granted against the defendant under Sections 1 and 2 of the Act of

Congress of July 2, 1890, entitled "An act to protect trade and commerce against restraints and monopolies," commonly known as the Sherman Act, as amended.

II

For purposes of this Final Judgment:

- (a) "Person" means any individual, corporation, partnership, association, firm or other business or legal entity;
- (b) "Defendant" shall mean Continental Can Company, Inc.;
- (c) "Firm" shall mean any business entity and its parents and subsidiaries;
- (d) "Purchasing decision" or "decision to purchase" shall include any decision, at any stage in the purchasing process, as to the selection of suppliers, the allocation of purchases among suppliers, the placing of any firm on a bidders' list, the designation of any firm as a qualified bidder, the selection of a winning bidder, or the continuance, discontinuance, increase or decrease of purchases from any supplier;
- (e) "Supplier" includes, but is not limited to, both actual and potential suppliers of any goods, commodities or services; bidders; lessors as well as sellers; construction contractors; in-plant cafeteria and vending operators; and transportation companies. The term shall also include suppliers of suppliers; and any firm in a series of suppliers of suppliers;
- (f) "Customer" includes but is not limited to, both actual and potential customers for any goods, commodities or services; lessees as well as purchasers; construction contractors; in-plant cafeteria and vending operators; and transportation companies. The term shall also include customers of customers; and any firm in a series of customers of customers;

(g) The terms "purchase" and "sale" include but are not limited to, both actual and potential purchases or sales, increases in purchases or sales and potential increases in purchases or sales. The terms "purchase" and "sale" shall also include the purchase or sale of transportation service or any arrangement covering the use of any transportation company's services. The terms "purchase" and "sale" cover both products and services and any combination thereof, including construction and engineering service, and any transfer of any property interest including but not limited to leaseholds and arrangements for in-plant feeding or vending service;

(h) "Trade relations" shall mean and include any policy, program or activity which involves either the use of a firm's purchases to aid, influence or promote the firm's sales to suppliers, or the consideration of a firm's sales to particular suppliers as a factor in the firm's purchasing decisions.

III

The provisions of this Final Judgment shall apply to defendant and its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. This Final Judgment shall not apply to any acts or transactions outside the United States which do not substantially affect the interstate or foreign commerce of the United States.

IV

Defendant is hereby enjoined and restrained from:

- (a) Practicing or engaging in trade relations;
- (b) Purchasing or selling goods or services on the condition or understanding that any purchase by the defendant from any supplier will be

based or conditioned upon defendant's sales to said supplier or any supplier to said supplier;

(c) Communicating, expressly or by implication, to any person:

(1) that defendant did, does or will consider its sales to any firm as a factor in any decision to purchase from said firm or any customer thereof;

(2) that any firm should consider defendant's purchases from it as a factor in any decision to purchase from defendant;

(d) Establishing or maintaining any trade relations office or position; and from assigning to, or permitting any employee to have any trade relations duties or activities;

(e) Preparing or keeping statistical compilations for any supplier or any class or grouping of suppliers which compare or relate purchases from such suppliers with sales by defendant to such supplier or suppliers;

(f) Giving or showing any report of defendant's purchases, or information extracted therefrom, to any personnel with primarily sales responsibility, providing such personnel with information as to the dollar amount of purchases from any supplier, providing such personnel with an identification of any of defendant's suppliers, or permitting such personnel to have or to seek purchase information not readily available to the public;

(g) Giving or showing to any purchasing agent any customer list or sales report which identifies defendant's customers, providing personnel with primarily purchasing responsibility with information as to the dollar amount of defendant's sales to any customer, providing such personnel with an identification of any of defendant's customers or permitting such personnel to have or to seek sales information not readily available to the public;

(h) Holding any meeting for the purpose of ascertaining, facilitating or furthering any relationship between purchases by defendant from a supplier or customer and sales by defendant to such supplier or customer, or using for such purpose purchasing personnel to introduce suppliers to sales personnel, or using for such purpose sales personnel to introduce customers to purchasing personnel;

(i) Belonging to or permitting its officers or employees to belong to or participate in the activities of, or contribute anything of value to any association or group whose activity, program or objectives are to promote trade relations.

V

Defendant is ordered and directed to:

(a) Disregard sales to any supplier as a factor in all purchasing decisions whatsoever;

(b) Adopt and maintain a written corporate policy requiring that all officers and employees with purchasing responsibilities disregard the defendant's sales to any supplier as a factor in all purchasing decisions whatsoever and take all necessary and appropriate action to insure compliance with said policy if and when defendant should receive actual notice that any employee has violated said policy;

(c) Take all necessary and appropriate action to inform its present and future officers and its present and future employees having managerial, or primarily purchasing or sales responsibilities or responsibility for analyzing purchase or sales information of the provisions and requirements of this Final Judgment, and that they are required to comply therewith; and defendant shall furnish within ninety (90) days of the entry hereof a copy of this Final Judgment to each officer and to each employee having managerial, or primarily purchasing

or sales responsibilities, or responsibility for analyzing purchase or sales information, together with a written notice, signed by its president, or chief executive officer, in a form satisfactory to plaintiff, which notice shall promulgate the policy required by subparagraph V (b) above; and thereafter defendant shall immediately furnish a copy of this Final Judgment and such notice to each person who becomes such an officer or employee at any time;

(d) Furnish within sixty (60) days after entry hereof a copy of this Final Judgment to each supplier from whom defendant has purchased and to each customer to whom defendant has sold more than \$50,000 of products, goods, or services during any of defendant's fiscal years 1971 through 1973, together with a written notice satisfactory to the plaintiff;

(e) File with the plaintiff, on each anniversary date of this Final Judgment, a report setting forth the steps which it has taken during the prior year to comply with this Final Judgment, and to advise the defendant's officers, directors and employees of its and their obligations under this Final Judgment.

VI

Nothing in Sections IV or V of this Final Judgment shall prohibit defendant from:

(a) Entering into or adhering to any contract, agreement, or arrangement (whether purchase or sale, or otherwise) for the conversion of defendant's products or goods into other forms for defendant's own use or for sale or lease by it or for the conversion by defendant of the products or goods of other companies;

(b) Entering into or adhering to any contract or agreement for construction work or for the manufacture, installation, servicing or operating of equipment, products or facilities, or the furnishing of supplies, for defendant's own use, or the use of its employees, on the

condition that defendant's or other specified products, goods or services be used in the performance of such contracts or agreements; provided such contracts or agreements are not used to promote any reciprocal purchasing policy, arrangements, or practices of the types covered by this Final Judgment;

(c) Complying with any requirement of any law or regulation having the effect of law or any procurement specification of any domestic or foreign government;

(d) Offering in connection with the sale of its products or goods, to purchase from or convert for purchasers thereof scrap generated by them in their use of defendant's products or goods; provided, however, that such purchasers shall not be obligated to sell such scrap to defendant or to have it converted by defendant as a condition of defendant's sale to such purchasers, and that defendant shall so advise such purchasers;

(e) Becoming a party to and performing exchange agreements with other manufacturing companies under which defendant will ship a product to or for the account of the other party to the agreement in return for shipment by that party of like or similar product to or for the account of defendant, making settlement therefor in cash or in kind.

Provided that the burden of coming forward with evidence and of establishing the applicability of any of the provisions of subparagraphs (a), (b), (c), (d) and (e) of this Article VI as a defense to any claimed violations of any of the provisions of this Final Judgment shall rest upon the defendant.

VII

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose; and subject to any legally recognized privilege:

(a) Any duly authorized representative or representatives of the Department of Justice shall, upon written request by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant, made to its principal office, be permitted:

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

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

(b) Upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as from time to time may be requested.

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

VIII

Jurisdiction is retained for the purpose of enabling either 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 for the construction or carrying out of this Final Judgment, for the modification of any of the provisions contained

herein, for the enforcement of compliance therewith, and the punishment of the violation of any of the provisions contained herein.

IX

This Final Judgment shall terminate and cease to be effective ten (10) years from the date of entry of this Final Judgment.

Dated: July 29, 1974.

/s/ CHARLES E. STEWART, JR.