

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Krause Milling Co. and ADM Milling Co., U.S. District Court, D. Kansas, 1979-2 Trade Cases ¶62,991, (Sept. 20, 1979)

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United States v. Krause Milling Co. and ADM Milling Co.

1979-2 Trade Cases ¶62,991. U.S. District Court, D. Kansas, Civil Action No. 78-1122, Entered September 20, 1979, (Competitive impact statement and other matters filed with settlement: 44 *Federal Register* 35301).

Case No. 2630, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing: Food Supplements: Blended Fortified Foods: Consent Decree.— A grain milling company was prohibited by a consent decree, for a period of 10 years, from adhering to any agreement to fix prices or rig bids for blended fortified foods; from allocating contracts, markets, customers or territories; or from communicating or exchanging information on prospective prices and other terms and conditions of sale of such food products.

For plaintiff: John H. Shenefield, Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, Allyn A. Brooks, James J. Kubik, Diane C. Lotko-Baker, John E. Sarbaugh, Mark S. Prosperi, Attys. Dept. of Justice, Chicago, Ill.

For defendants: Dick H. Woods, of Stinson, Mag, Thomson, McEvers & Fizzell, Kansas City, Mo.

Final Judgment [as to ADM Milling Co.]

Brown, D. J.: Plaintiff, United States of America, having filed its complaint herein on March 27, 1978, and its amended complaint on July 26, 1978 and defendant ADM Milling Co. ("ADM"), having appeared and filed its answer to the amended complaint denying the material allegations thereof and raising an affirmative defense, and plaintiff having dismissed Counts Two and Three of its amended complaint as to defendant ADM by agreement with defendant ADM; and plaintiff and defendant ADM, by their respective attorneys, each 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 against or an admission by any party hereto with respect to any such issue;

Now, Therefore, before the taking of any testimony, without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence or admission by any party with respect to any such issue, and upon the consent of the parties aforesaid, it is hereby

Ordered, Adjudged and Decreed with respect to Count One of plaintiff's amended complaint as to defendant ADM only as follows:

I

[Jurisdiction]

This Court has jurisdiction of the subject matter of this action and each of the parties consenting hereto. Count One of the amended complaint states a claim upon which relief may be granted against defendant ADM under [Section 1 of the Sherman Act](#) (15 U. S. C. §1).

As used in this Final Judgment:

II

(A) "blended foods" means any soy fortified sorghum grits, soy fortified bulgur, soy fortified rolled oats, soy fortified corn meal, corn soya blend, instant soy fortified corn meal, sweetened instant soy fortified corn meal, soy

fortified bread flour, whey soy drink mix, wheat protein concentrate blend, wheat soy blend and sweetened wheat soy blend, and soy fortified rice;

(B) “government agency” means any department, division, agency, branch or instrumentality of the United States, and any state or municipality;

(C) “person” means any individual, partnership, firm, corporation, association, or other business or legal entity.

III

[Applicability]

The provisions of this Final Judgment shall apply to defendant ADM and to each of 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.

IV

[Prices; Allocation; Information]

Defendant ADM is enjoined and restrained from entering into, adhering to, maintaining, enforcing or furthering, directly or indirectly, any contract, combination or conspiracy with any other person to:

(A) Fix, determine, establish, maintain or stabilize the prices, discounts or other terms or conditions for the sale of blended foods to any person, government agency or foreign government;

(B) Submit noncompetitive, collusive, or rigged bids on contracts for the sale of blended foods to any person, government agency or foreign government;

(C) Allocate contracts, rotate or divide markets, customers or territories with respect to sales of blended foods to any person, government agency or foreign government; and

(D) Communicate to or exchange with any other person manufacturing or selling blended foods any term or condition of sale including but not limited to any actual or proposed price, price component, price change, discount, total quantity, incremental price or quantity, or freight rate, at or upon which blended foods are to be, or have been, sold to any person, prior to the communication of such information to the public generally.

Subparagraphs (A) and (D) of this Section IV shall not apply to prices, discounts, or other terms or conditions of sale, or necessary communications relating thereto, offered by defendant ADM to any person or offered by any person to defendant ADM in negotiating for, entering into or carrying out a bona fide sale or proposed sale or purchase of blended foods either between the defendant and such other person or where such other person is acting as a purchasing agent or group buying representative on behalf of any third person.

V

[Copy of Audit]

Defendant ADM shall furnish to the plaintiff a copy of each audit of its bidding procedures that may be required by the Final Order entered against it in the Commodity Credit Corporation Debarment proceedings involving defendant ADM and commenced by the Commodity Credit Corporation's issuance on April 28, 1978, of its notices of proposed debarment, and any written modifications or interpretations of those Orders.

VI

[Records]

For a period of five (5) years from the date of entry of this Final Judgment, defendant ADM shall preserve all written price computations and other written calculations performed by it, subsequent to March 27, 1978, in the preparation of any bid on blended foods.

VII

[*Compliance*]

Defendant ADM is ordered and directed:

(A) To furnish, within sixty (60) days after the entry of this Final Judgment, a copy of this Final Judgment to each of its officers and directors, and to each of its employees and agents who have any responsibility for preparing, reviewing or submitting bids on blended foods;

(B) To furnish a copy of this Final Judgment to each successor to such officers, directors, employees or agents described in Paragraph (A) of this Section VII within sixty (60) days after such successor becomes employed or associated with defendant ADM;

(C) To obtain a receipt from each person to whom a copy of this Final Judgment has been furnished pursuant to Sections VII A and B hereof, and to maintain said receipts so long as this Final Judgment is effective;

(D) To establish a program for dissemination of, education as to, and compliance with this Final Judgment, involving each corporate officer, director, employee and agent having responsibilities in connection with or authority over the establishment of prices, discounts, or other terms or conditions of sale or blended foods, advising them of its and their obligations under this Final Judgment. This program shall include an explanation of the Final Judgment and a statement of corporate compliance policy thereunder;

(E) To furnish to plaintiff within one hundred and twenty (120) days of the entry of this Final Judgment, and thereafter upon request by plaintiff for a period of five (5) consecutive years from the date of its entry, an annual account of all steps defendant has taken since the prior account to discharge its obligations under this Section VII and to include with said account copies of all written directives issued during the prior year with respect to compliance with the terms of this Final Judgment.

VIII

[*Acquiring Parties*]

Defendant ADM shall require, as a condition of the sale or disposition of all, or substantially all, of the assets used by it in the production and sale of blended foods, that the acquiring party agree to be bound by the provisions of this Final Judgment, and that such agreement be filed with the Court.

IX

[*Discovery*]

Defendant ADM agrees to cooperate with plaintiff during both the pre-trial discovery and the trial of this case, including but not limited to the following cooperation:

(A) Producing expeditiously in advance of trial any and all corporate documents not privileged and relevant to the issues in this case requested by the Government without the necessity of a subpoena;

(B) Consenting to interviews of corporate personnel, who may have counsel present, regarding any of the allegations in the complaint in this case and the explanation of corporate documents.

X

[*Inspections*]

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

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

(1) Access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

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

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendant ADM's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents 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 Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law or court order.

(C) If at the time information or documents are furnished by defendant ADM to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendant ADM is not a party.

XI

[Retention of Jurisdiction]

Jurisdiction is retained by this Court 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 or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of violation thereof.

XII

[Term of Judgment]

This Final Judgment shall be in effect for a period of ten years from the date of its entry by this Court.

XIII

[Public Interest]

Entry of this Final Judgment is in the public interest.