

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

WITCO CHEMICAL CORPORATION,

Defendant.

Civil No. 60-69 (Erie)

Entered: Jan. 12, 1970

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on July 24, 1969, and defendant, Witco Chemical Corporation, having appeared by its counsel and filed its answer to such complaint denying the substantive allegations thereof, and plaintiff and defendant each having consented to the entry of this Final Judgment herein, 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:

NOW, THEREFORE, without any testimony having been taken herein, and without trial, adjudication or finding of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states a claim upon which relief may be granted under Section 1 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 1), commonly known as the Sherman Act.

II

As used in this Final Judgment,

(A) "Person" means any individual, partnership, firm, corporation, association, or other business or legal entity.

(B) "Automotive Petroleum products" means any or all branded or trade-marked gasoline, motor oils, lubricants, greases and undercoating for motor vehicles produced or sold by defendant.

(C) "Buyer" means any person who sells or distributes Automotive Petroleum products in the United States, including but not limited to distributors, sub-distributors, dealers, commission agents, consignees or other persons selling or distributing Automotive Petroleum products, except defendant.

(D) "Defendant" means Witco Chemical Corporation and any other corporation or legal entity owned or controlled by Witco Chemical Corporation which produces, sells or distributes Automotive Petroleum products in the United States.

(E) "United States" means the various States of the United States of America, any territory thereof, the District of Columbia, and any insular possession or other place under the jurisdiction of the United States.

III

The provisions of this Final Judgment shall apply to the defendant, its successors and assigns, and to their respective officers, directors, agents servants and employees, and to all other persons in active concert or participation with the defendant who shall receive actual notice of this Final Judgment by personal service or otherwise. For the purposes of this Final Judgment the defendant named herein, and its subsidiaries, officers, directors, servants and employees, or any of them, shall be deemed to be one person.

IV

Defendant is enjoined and restrained from directly or indirectly:

(A) Entering into, adhering to, enforcing or claiming, or maintaining any right under any contract, agreement, understanding, plan, or program with any buyer to fix, establish, limit or restrict:

- (1) The prices at which Automotive Petroleum products may be sold or distributed by any buyer.
- (2) The persons or classes of persons to whom, or the territories in which, Automotive Petroleum products may be sold or distributed by any buyer or by the defendant.

(B) Selling or supplying, or offering to sell or supply Automotive Petroleum products to any buyer or prospective buyer upon any condition or understanding which fixes, establishes, limits, or restricts the prices at which, the persons or classes of persons to whom, or the territories in which any buyer or prospective buyer may sell or distribute Automotive Petroleum products.

(C) Publishing, issuing, or disseminating in any price lists, catalogs, bulletins, or announcements prices at or upon which any buyer should sell, advertise, or distribute Automotive Petroleum products to any third person, unless such material contains a statement in easily legible type in substance that such prices are suggested only and that any buyer is free to sell, advertise, or distribute Automotive Petroleum products at prices of his choice, provided, however, that this Section (C) shall not apply to any now-existing copies of such price lists, catalogs, bulletins, or announcements until March 31, 1970.

Taking or threatening to take any disciplinary action against any buyer because of the prices at which, the persons or classes of persons to whom, or the territories in which such buyer has sold or distributed or intends to sell or distribute Automotive Petroleum products.

(E) Selling or supplying, or offering to sell or supply Automotive Petroleum products to any buyer or prospective buyer upon the condition that the purchaser or prospective purchaser not sell or distribute petroleum products produced or sold by a competitor of defendant.

(F) Refusing to continue to sell or supply Automotive Petroleum products to any buyer because such buyer sells or distributes petroleum products produced or sold by a competitor of the defendant.

PROVIDED, however, that after the expiration of a period of five (5) years from the date of entry of this Final Judgment, nothing contained in Section IV of this Final Judgment shall prevent or be deemed to prohibit the defendant from lawfully exercising such rights, if any, as it may have arising under Fair Trade laws then in effect.

V

(A) Defendant is ordered and directed, within ninety (90) days of the date of entry of this Final Judgment, to take all necessary action to effect the cancellation of each provision of every contract, agreement, or understanding between and among the defendant and any buyer which is contrary to or inconsistent with any provision of this Final Judgment.

(B) Defendant is ordered and directed, within ninety (90) days from the date of entry of this Final Judgment, to mail to each buyer with whom defendant has a written contract a conformed copy of this Final Judgment.

(C) Defendant is ordered and directed for a period of one year from the date of entry of this Final Judgment to mail to each other buyer with whom defendant contracts in writing during that year a conformed copy of this Final Judgment.

(D) Defendant is ordered and directed to file with this Court and serve upon the plaintiff, within 120 days from the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with Sections (A) and (B) of Section V.

VI

(A) For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, 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 made to defendant's principal office, be permitted, subject to any legally recognized privilege:

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

(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 matter.

(b) Defendant, on the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing, under oath if requested, with respect to any matters contained in this Final Judgment as may from time to time be requested for the purpose of determining or securing compliance with this Final Judgment.

(c) No such information obtained by the means provided for in this Section VI 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 of America 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.

VII

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