

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil Action No. 72-210
v.)	
)	Entered: March 29, 1972
MARTIN MARIETTA CORPORATION,)	
)	
Defendant.)	

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on February 29, 1972, 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;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication 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 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 unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II.

For purposes of this Final Judgment:

(A) "Defendant" shall mean Martin Marietta Corporation, and all wholly owned subsidiaries, and all partially owned consolidated subsidiaries, of Martin Marietta Corporation.

(B) "Job placements" shall mean awards made to a contractor, subcontractor or supplier for work to be done or materials to be supplied after bids have been obtained in response to bid inquiries issued by defendant for particular projects.

(C) "Capital expenditures" shall mean contract purchases that add to defendant's fixed assets or that have the effect of increasing the capacity, efficiency, life span or economy of operation of defendant's existing fixed assets.

(D) The term "supplier" shall include actual and potential suppliers, bidders, and firms invited or solicited to bid, contractors, subcontractors, suppliers of services, products or mixed services and products and suppliers of suppliers.

III.

The provisions of this Final Judgment shall apply to defendant, and its officers, directors, agents, employees, 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.

Defendant is enjoined and restrained from:

(A) Purchasing products, goods or services from, or entering into or adhering to any contract, agreement or understanding with, any actual or potential supplier on the condition or understanding that purchases by defendant from any supplier will be based or conditioned upon defendant's sales to any suppliers.

(B) Selling products, goods or services to, or entering into or adhering to any contract, agreement or understanding with, any actual or potential customer on the condition or understanding that defendant's purchases of products, goods or services from such customer will be based or conditioned upon defendant's sales to any customer.

(C) Communicating to defendant's actual or potential suppliers or contractors that:

(1) in purchasing products, goods or services preference will be given to any such supplier or contractor based or conditioned upon defendant's sales to such supplier or contractor;

(2) in compiling bidder lists or in obtaining any position on any bidding list or any status as a qualified bidder, or in awarding job placements for capital expenditures or purchases of products, services or mixed product and service, preference will be given to any such contractor or supplier based or conditioned upon defendant's sales to such contractor or supplier;

(3) defendant is entitled to participate in the purchases by any such supplier or contractor of products or goods sold or services provided by defendant based or conditioned upon defendant's purchases from such supplier or contractor;

(D) Communicating to prime contractors or subcontractors that in awarding subcontracts or purchasing material from material suppliers preference is to be given to any such subcontractor or material supplier based or conditioned upon defendant's sales to such subcontractor or material supplier.

(E) Comparing or exchanging statistical data with any supplier or contractor to ascertain, facilitate or further any relationship between purchases by defendant from such supplier or contractor and sales by defendant to such supplier or contractor.

(F) Engaging in the practice of discussing with any supplier, contractor or customer the relationship between purchases by defendant from such supplier, contractor or customer and sales by defendant to such supplier, contractor or customer of the defendant.

(G) Communicating, in its dealings with any of its customers or suppliers, the fact of purchases by any business entity in which defendant has an ownership interest, to promote sales to such customers or suppliers.

(H) Directing, recommending or suggesting that any business entity in which defendant has an ownership interest purchase from any of the defendant's customers or potential customers, in order to reciprocate for purchases made by, or promote sales by defendant to, such customers or potential customers.

(I) Communicating to particular suppliers the fact of purchases from such suppliers by one of defendant's subsidiaries or divisions to promote sales to such suppliers by other subsidiaries or divisions of the defendant.

(J) Agreeing with particular suppliers that such suppliers will purchase from certain of defendant's customers in order to reciprocate for purchases made by the defendant from such suppliers.

(K) Agreeing with particular suppliers that such suppliers shall attempt to persuade other companies to buy from the defendant in order to reciprocate for purchases made by the defendant from such suppliers;

(L) Making calls or visits to suppliers or customers in which sales personnel and purchasing personnel accompany each other, or using purchasing personnel to introduce suppliers to sales personnel, or using sales personnel to introduce customers to purchasing personnel. Nothing in this subparagraph (L) shall apply to activities in preparation or execution of joint procurement proposals to agencies of the United States Government.

V.

Defendant is enjoined and restrained from:

(A) Purchasing products, goods, or services on the basis of the supplier's status as a customer or potential customer.

(B) Preparing, maintaining or employing statistical compilations or lists identifying any supplier or any class or grouping of suppliers which list or compare purchases from suppliers who supply products, goods, or services to defendant with sales by defendant to such suppliers.

(C) Issuing to any purchasing agent any lists, notices, or other modes of specification which identify customers and their purchases from defendant or which specify or recommend that purchases be made from any such customers.

(D) Issuing to any salesman any lists, notices, or other modes of specification which pertain to purchases that have been made by defendant from particular customers or which identify suppliers or their sales to the defendant.

(E) Referring lists of bids received on capital expenditures or purchases of any kind to any salesman for recommendations for job placements or as to purchases.

VI.

Defendant is ordered and directed to:

(A) Abolish the position of Director of Commercial Relations; refrain from having a successor to such office or position, and refrain from establishing or maintaining any offices or positions having duties relating to activities, programs, or objectives to promote trade relations or commercial relations.

(B) Withdraw from all personnel with sales or purchasing responsibilities any lists or compilations described in Section V above as currently may be in their possession or provide for the destruction of such lists or compilations.

(C) Withdraw from membership, and to cause its officers and/or employees to withdraw from membership, in the Trade Relations Association, Inc., and refrain from being a member of, and prohibit its officers and employees from belonging to or participating in the activities of, or contributing anything of value to, any association whose activities, programs, or objectives are to promote trade relations or commercial relations by using purchasing power to influence sales.

(D) Issue by its president in a form satisfactory to plaintiff within sixty (60) days to each of its officers and each of its employees having sales or purchasing responsibilities and adopt, maintain, and enforce as its own corporate policy a policy directive stating

(1) all officers and employees are prohibited from purchasing products, goods, or services from, or entering into or adhering to any contract, agreement, or understanding with, any supplier on the condition or understanding that purchases by defendant from such supplier will be based or conditioned upon defendant's sales to such supplier, or requesting or otherwise influencing any other officer or employee with purchasing responsibility to make any exception to the foregoing policy;

(2) all officers and employees are prohibited from selling products, goods, or services to, or entering into or adhering to any contract, agreement, or understanding with, any actual or potential customer on the condition or understanding that purchases by defendant of products, goods, or services from such customer will be based or conditioned upon defendant's sales to such customer

or from utilizing the purchases of the defendant in any communication or conversation with any customer or prospective customer for the purpose of promoting the sale of the defendant's products or services;

(3) all officers and employees are prohibited from soliciting bids for any capital expenditures from, or awarding job placements, to, or entering into or adhering to any contract, agreement, or understanding for the solicitation of bids from or award of job placement to, any contractor supplier, upon the condition or understanding that solicitations or awards by defendant will be based or conditioned upon defendant's sales to such contractor or supplier;

(4) all officers and employees with purchasing responsibilities are required to adhere to the policy that no consideration or recognition shall be given to the fact that a particular supplier buys or uses, or does not buy or use, to any degree, the products or services made or sold by any defendant, or by any customer or potential customer of the defendant; and that any decision to place any firm on any bidding list or to designate any firm as a qualified bidder shall be made only in accordance with the foregoing policy.

(5) all officers and employees are prohibited from influencing, requesting or suggesting to any officer or employee with purchasing responsibilities to make any exception of the foregoing policy on the basis of any firm's purchase or use, or failure to purchase or use, products or services made or sold by the defendant, or by any customer or potential customer of the defendant;

(6) all officers and employees having sales responsibilities are prohibited from utilizing the purchases of defendant in any communication or conversation with any customer or prospective customer for the purpose of promoting the sale of defendant's products or services or the products or services of any company affiliated with defendant; and

(7) violations of this policy directive may subject any offending officer or employee to punishment by the Court for violation of this Final Judgment.

(E) Furnish within sixty (60) days after the entry hereof, a copy of this Final Judgment to each supplier or customer, other than an agency of the United States, from whom it has purchased, or to whom it has sold more than \$50,000.00 of products, goods, or services during any of the years 1969 through 1971. A written

notice satisfactory to the plaintiff shall accompany the copy of the Final Judgment.

VII.

The defendant is ordered to 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 advise the defendant's appropriate officers, directors, and employees of its and their obligations under this Final Judgment.

VIII.

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose:

(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, in New York, New York, be permitted, subject to any legally recognized privilege:

(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 any 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 VIII 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.

IX.

Nothing contained in this Final Judgment shall prohibit defendant from entering into arrangements for the conversion of its products or goods into other forms thereof for its own use or resale or from converting products or goods for others; or in contracting for construction work or for the manufacture and

installation of equipment and facilities for its own use, from specifying that products and goods of defendant's manufacture are to be incorporated into such building, equipment, or facilities.

X.

Jurisdiction is retained for the purpose of enabling either of the parties to this Final Judgment to apply to the 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 contained herein, for the enforcement of compliance therewith, and the punishment of the violation of any of the provisions contained herein.

XI.

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

Dated: April 4th 1972

15/ JAMES R. MILLER
UNITED STATES DISTRICT JUDGE