

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
HERCULES INCORPORATED,)
)
Defendant.)

Hon. Dickinson R. Debevoise

Civil Action No. 80-136

FINAL JUDGMENT

Filed: December 16, 1980

Entered: March 27, 1981

Plaintiff, United States of America, having filed its complaint herein on January 11, 1980, and plaintiff and defendant, Hercules Incorporated ("Hercules"), 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's constituting any evidence against or an 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 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 consenting hereto. The complaint states a claim upon which relief may be granted against the defendant under Section 2 of the Sherman Act (15 U.S.C. § 2).

II

As used in this Final Judgment, the term:

- (A) "Person" means any individual, corporation, partnership, firm, association, or other business or legal entity;
- (B) "Industrial nitrocellulose" means a dry white amorphous synthetic chemical produced by the chemical action of nitric acid on cellulose. Commonly made from the cellulose found in wood pulp or cotton linters, industrial nitrocellulose is classified by its uses and has a nitrogen content between 10.8 percent and 12.2 percent;
- (C) "Nitrocellulose producer" means those persons engaged in the business of manufacturing nitrocellulose;
- (D) "Distributor" means (so long as they serve in that capacity) any person in the U.S. who has been publicly designated as an agent or distributor, or whose designation as such is otherwise made known to the defendant by the producer, distributor, or agent;
- (E) "Subsidiary" shall mean a company of which the parent owns more than 50% of capital stock; and
- (F) "Affiliate" shall mean an entity of which the defendant has more than 50% non-stock ownership interest or has less than 50% interest and exercises or has the right to exercise control.

III

This Final Judgment applies to the defendant, Hercules, and to its officers, directors, agents, employees, subsidiaries,

affiliates, 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

Subject to the exceptions provided in Articles V and VI herein, defendant Hercules is enjoined and restrained from:

- (A) Furnishing to or requesting from any other industrial nitrocellulose producer, or distributor in the U.S. for such producer:
1. information concerning the prices, terms or other conditions of sale which any industrial nitrocellulose producer intends to charge or is considering submitting to any actual or prospective purchaser of industrial nitrocellulose; provided that this prohibition shall not apply to information disseminated in the form of a press release or public announcement, or to written notification to all or to a class of customers or prospective customers; and
 2. information concerning industrial nitrocellulose production capacity, excess production capacity, or production available for export; provided that this prohibition shall not apply to information disseminated in the form of a press release or public announcement, or to written notification to all or to a class of customers or prospective customers; and

- (D) File with this Court and serve upon the plaintiff within ninety (90) days after the date of entry of this Final Judgment and annually thereafter on the anniversary of this Final Judgment an affidavit as to the fact and manner of its compliance with Paragraph VII hereof; and
- (E) Serve upon the plaintiff annually on the anniversary of this Final Judgment the following information concerning bona fide purchases and sales of industrial nitrocellulose between Hercules and any other industrial nitrocellulose producer pursuant to Article V hereof: identity of purchaser and seller; amount of industrial nitrocellulose purchased or sold; and price of nitrocellulose purchased or sold. If Hercules is the purchaser, the information so furnished shall include a statement of the reasons for such purchase.

VIII

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 made to its principal office, be permitted:

- (1) Access during regular office hours of defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant, who may have counsel present; and
 - (2) Subject to the reasonable convenience of defendant and without restraint or interference from it, to interview officers, employees, and agents of defendants, who may have counsel present;
- (B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendant's principal office, 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;
- (C) No information or documents obtained in the means provided in this Section VIII shall be divulged by an 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; and

(D) If at the time information or documents are furnished by defendant to plaintiff by the means provided in this Section VIII, and defendant at the time 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 ten (10) days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceedings (other than a grand jury proceeding) to which defendant is not a party.

IX

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

X

Defendant shall require, as a condition of the sale or disposition of all, or substantially all, of the assets used by it in its industrial nitrocellulose business, that the

acquiring party agree to be bound by the provisions of this Final Judgment, and that such agreement be filed with the court.

XI

The term of this Final Judgment shall be ten (10) years from the date of entry.

XII

Entry of this Final Judgment is in the public interest.

Dated: March 27, 1981

Dickinson R. Debevoise
UNITED STATES DISTRICT JUDGE