

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. California and Hawaiian Sugar Co., Holly Sugar Corp., and Consolidated Foods Corp., U.S. District Court, N.D. California, 1978-2 Trade Cases ¶62,236, (Sept. 14, 1978)**

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United States v. California and Hawaiian Sugar Co., Holly Sugar Corp., and Consolidated Foods Corp.

1978-2 Trade Cases ¶62,236. U.S. District Court, N.D. California, Civ. No. 74-2675 RHP, Entered September 14, 1978, (Competitive impact statement and other matters filed with settlement: 43 *Federal Register* 27252).

Case No. 2428, Antitrust Division, Department of Justice.

**Sherman Act**

**Price Fixing: Exchange of Information: Bona Fide Sales: Permitted Transmission of Price Lists or Announcements: Consent Decree.**— Three sugar refiners were enjoined by a consent decree from agreeing to fix prices or to announce price changes in advance for the sale of refined sugar. The prohibitions contained in the decree would not apply to proposed or actual bona fide sales of refined sugar. Transmission to a broker of a refiner's own price lists or price announcements were not prohibited under the decree as long as such information was publicly disseminated.

**For plaintiff:** John H. Shenefield, Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, Anthony E. Desmond, Christopher S. Crook, Glenda R. Jermanovich, Attys., Dept. of Justice. **For defendants:** Brobeck, Phleger & Harrison, San Francisco, Cal., for California and Hawaiian Sugar Co.; Rayner M. Hamilton, of White & Case, New York, N. Y., for Holly Sugar Corp.; Lawrence W. Keeshan, of Heller Ehrman White & McAuliffe, San Francisco, Cal., for Union Sugar Div. of Consolidated Foods Corp.

**Final Judgment**

Peckham, D. J.: Plaintiff, United States of America, having filed its complaint herein on December 19, 1974 and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment in the above-captioned case, without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or admission by any party with respect to any issue of fact or law herein:

Now, Therefore, without any testimony being taken herein, and without trial or adjudication of any issue of fact or law herein, and upon consent of all parties hereto, it is hereby Ordered, Adjudged, and Decreed:

**I**

**[ Jurisdiction]**

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

**II**

**[ Definitions]**

As used in this Final Judgment:

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

- (B) "Refined sugar" means any grade or type of refined dry or liquid sugar derived from sugar beets or raw cane sugar;
- (C) "Refiner" means any company engaged in the processing of sugar beets or the refining of raw cane sugar into, and the sale of, refined sugar;
- (D) "Basis price" means the list price of refined sugar sold by a refiner f. o. b. its refinery or processing factory;
- (E) "Prepaid freight application," commonly known as a "prepay," means a portion of the delivered price for refined sugar equal in amount to a freight charge from a basing point to the customer's location;
- (F) "Delivered price" means the price of refined sugar delivered to the customer and generally consists of the basis price plus the prepaid freight application;
- (G) "Allowance" means a discount from delivered price;
- (H) "Effective selling price" means the price actually charged to the customer by the refiner and generally consists of the delivered price, less any allowance;
- (I) "Prices, terms or conditions for the sale of refined sugar" includes, but is not limited to basis prices, prepaid freight applications, allowances, delivered prices or effective selling prices;
- (J) "Broker" means a person not an employee of a refiner who arranges the sale of sugar for one or more refiners in exchange for a commission;
- (K) "Jobber" means a person who purchases sugar from refiners for resale to industrial users or to wholesalers of grocery sugar;
- (L) "Sugarbeet grower representative" means a person who represents one or more associations or organizations of sugarbeet growers;
- (M) "Future Prices" means (1) changes or revisions in the prices at which, or the terms or conditions upon which a refiner then sells or offers to sell sugar or (2) the prices, terms or conditions of sale which have been announced publicly by a refiner but have not yet become effective pursuant to the terms of the announcement.

### III

#### **[ Applicability ]**

The provisions of this Final Judgment shall apply to the defendants and to each of their respective officers, directors, agents and employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them, including brokers, and sugarbeet grower representatives, who shall receive actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment, each defendant, together with its parent company, its controlled subsidiaries, and commonly controlled affiliates along with each of its officers, directors and employees when acting solely in such capacity shall be deemed to be one person. The provisions of this Final Judgment shall apply to acts or transactions of any defendant occurring within, or affecting any acts or transactions within, the States of California and Arizona and the Cities of Las Vegas and Reno, Nevada.

### IV

#### **[ Price Fixing Announcements ]**

Each refiner defendant is enjoined and restrained from entering into, adhering to, participating in, maintaining, enforcing or claiming any right under any agreement, contract, understanding, or combination reached directly with any other refiner, jobber or other seller of refined sugar (except retail grocers), or indirectly through any intermediary, including but not limited to brokers, sugarbeet grower representatives and sugar cane grower representatives, to:

- (A) Fix, raise, maintain or stabilize the prices, terms or conditions for the sale of refined sugar;

(B) Give any prior notice of or announce in advance any change or contemplated change in prices, terms or conditions for the sale of refined sugar.

## V

### [ *Exchange of Information* ]

Each refiner defendant is enjoined and restrained from:

- (A) Directly communicating to any other refiner information concerning Future Prices.
- (B) Requesting, requiring or coercing any third person, including but not limited to brokers and sugarbeet grower representatives, to communicate to any other refiner, information concerning Future Prices.
- (C) For a period of ten (10) years from the date of entry of this Final Judgment,
  - (1) Directly communicating to any other refiner information concerning:
    - (a) the prices at which, or terms or conditions upon which, refined sugar is then being sold or offered for sale; or
    - (b) the prices at which, or terms or conditions upon which, other than prices or terms or conditions described in subsection (1)(a) of this paragraph (C), refined sugar has been sold or offered for sale within the one (1) year period ending on the date of the communications;
  - (2) Requesting, requiring or coercing any third person, including but not limited to brokers and sugarbeet growers representatives, to communicate to any other refiner, information concerning the prices at which, or terms or conditions upon which, refined sugar is then being sold or offered for sale.

## VI

### [ *Bona Fide Sales* ]

Without limiting the provisions of Sections IV and V nothing in Paragraphs IV and V above shall prohibit:

- (A) The communication or exchange, either directly or indirectly, of any prices, terms or conditions of sale from any refiner defendant to another refiner solely in connection with a proposed or actual bona fide sale of refined sugar from one refiner to another refiner or to any agreement to the prices, terms or conditions at which any such bona fide sale is actually made;
- (B) The communication or exchange, either directly or indirectly, of any prices, terms or conditions of sale, between any refiner defendant and a buyer of refined sugar (other than a refiner) concerning a proposed or actual bona fide sale by such a refiner or any other refiner to such buyer or to any agreement to the prices, terms or conditions at which any such bona fide sale is actually made;
- (C) The communication or exchange, either directly or indirectly, of any prices, terms or conditions of sale between a sugarbeet grower representative or a sugar cane grower representative and a refiner solely in connection with a proposed or actual bona fide sale of sugar beets or sugar cane to that refiner or to any agreement to the prices, terms or conditions at which any such bona fide sale is actually made;
- (D) The communication or exchange, either directly or indirectly, between any refiner defendant and any broker of any prices, terms or conditions of sale communicated between a refiner and a buyer of refined sugar (other than a refiner) concerning a proposed or actual bona fide sale of refined sugar; and
- (E) The transmission to a broker of a refiner's own price lists or price announcements, including price announcements whose terms have not yet become effective, at the same time or after such price lists or announcements are released for publication by such refiner, with the request that such information be publicly disseminated.

## VII

### [ *Notice to Employees* ]

Each refiner defendant is ordered and directed:

(A) Within sixty (60) days from the entry of the Final Judgment to (1) serve a copy of this Final Judgment upon each of its officers, directors, agents and employees who have any responsibility for the sale of refined sugar, and (2) obtain a written statement from each such person evidencing his receipt of the Final Judgment, such statement to be retained in the files of the President of each defendant for a period of ten (10) years from the date of service;

(B) Within sixty (60) days after new officer, director, agent or employee having any responsibility for the sale of refined sugar becomes employed by a defendant, that defendant shall serve a copy of the Final Judgment on that person and obtain a written statement evidencing his receipt of the Judgment, such statement to be retained in the files of the President of each defendant for a period of ten (10) years from the date of service;

(C) Within ninety (90) days from the entry of this Final Judgment, to serve upon plaintiff and to file with the Court, an affidavit concerning the fact and manner of compliance with Subsection (A) of this Section VII.

### **VIII**

#### **[ Notice to Brokers]**

Each refiner defendant is ordered and directed to:

(A) Within sixty (60) days of entry of this Final Judgment to (1) serve by certified mail, return receipt requested, a copy of this Final Judgment upon each broker who, within the past five years has sold its refined sugar, and (2) retain the certified mail receipts evidencing the mailing of the Final Judgment, such receipts to be retained in the files of the President of each defendant for a period of ten (10) years from the date of mailing;

(B) To (1) serve by certified mail, return receipt requested, a copy of this Final Judgment upon each of its future brokers at the time the broker begins selling its refined sugar, and (2) retain the certified mail receipts evidencing the mailing of the Final Judgment, such receipts to be retained in the files of the President of each defendant for a period of ten (10) years from the date of mailing;

(C) Within ninety (90) days from the entry of this Final Judgment, to serve upon the United States and to file with the Court, an affidavit concerning the fact and manner of compliance with Subsection (A) of this Section VIII, including the identity of the brokers served.

### **IX**

#### **[ 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 a defendant 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 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 a defendant'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 IX 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. If at the time information or documents are furnished by a defendant 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 that defendant is not a party.

**X**

**[ Retention of Jurisdiction]**

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 and directions as may be necessary or appropriate for the construction or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

**XI**

**[ Public Interest]**

Entry of this Final Judgment is in the public interest.