

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. American Pipe and Construction Co. and U. S. Industries, Inc., U.S. District Court, C.D. California, 1970 Trade Cases ¶73,038, (Feb. 26, 1970)

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United States v. American Pipe and Construction Co. and U. S. Industries, Inc.

1970 Trade Cases ¶73,038. U.S. District Court, C.D. California. Civil No. 64-1775-MP. Entered February 26, 1970. Case No. 1838 in the Antitrust Division of the Department of Justice.

Clayton and Sherman Acts

Merger—Acquisition of Competitor—Pipe Company—Consent Decree.—A manufacturer of concrete pipe was required by the terms of a consent judgment to dispose of the assets of a steel pipe producer that was acquired in 1963. In addition, the manufacturer was barred for a period of five years from acquiring any assets, stock or other interest in any other company in California engaged in the manufacture of pressure pipe of certain diameters, and also from acquiring such a company outside of California without first giving the government 60 days' notice.

For the plaintiff: Richard W. McLaren, Asst. Atty. Gen., William D. Kilgore, Jr., Baddia J. Rashid, Charles F. B. McAleer, Attys., Dept. of Justice.

For the defendants: James O. Sullivan.

Final Judgment

American Pipe and Construction Co.

PENCE, D. J.: Plaintiff, United States of America, having filed its complaint herein on the 21st day of December 1964, and defendants American Pipe and Construction Co. and U. S. Industries, Inc., having appeared by their attorneys and having filed their answers to such complaint, denying the substantive allegations thereof, and plaintiff and defendant American Pipe and Construction Co. having severally consented to this Final Judgment without trial or adjudication of any issue of fact or law herein and without any admission by plaintiff or said defendant in respect to any issue:

Now, therefore, before any testimony has been taken 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

[Jurisdiction]

This Court has jurisdiction of the subject matter hereof and of the consenting defendant pursuant to Section 4 of the Act of Congress of July 2, 1890, as amended (15 U. S. C. § 4), commonly known as the Sherman Act and pursuant to Section 15 of the Act of Congress of October 15, 1914, as amended (15 U. S. C. §25), commonly known as the Clayton Act, and the complaint states a claim upon which relief may be granted under [Section 1 of the Sherman Act](#) and under [Section 7 of the Clayton Act](#).

II

[Definitions]

As used in this Final Judgment:

(A)“American” shall mean defendant American Pipe and Construction Co., a corporation organized and existing under the laws of the State of California, with its principal office at Monterey Park, California;

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(B)“Pressure pipe” shall mean steel, concrete-cylinder, asbestos cement and cast iron pipe manufactured primarily to transport water, including, but not limited to drinking water, irrigation water, water resulting from storms and floods and water-borne substances, primarily sewage, under pressures exceeding 50 pounds per square inch, whether resulting from gravity flow or pumping;

(C)“Assets” shall mean those assets owned by defendant U. S. Industries, Inc., which were purchased by defendant “American” on or about December 1963, and which with various modifications and changes have been operated by American in the manufacture of steel pressure pipe. Said assets are described more particularly in Appendix I hereof.

III

[*Applicability*]

The provisions of this Final Judgment applicable to defendant American shall apply to American, its officers, agents, servants, employees, subsidiaries, successors and assigns, and to those persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise. Except for sales to or for the use of the plaintiff or any agency thereof, this Final Judgment shall not apply or relate to activities or operations outside of the United States not affecting the domestic or foreign commerce of the United States.

IV

[*Acquisition of Competitors*]

Defendant American is enjoined and restrained from acquiring any assets, shares of stock or other interests in any facilities or plant of any person, partnership, or corporation engaged in the manufacture of pressure pipe in diameters ranging from four inches to forty-eight inches for a period of five years from the date of entry of this judgment (a) where said properties are part of or relate to facilities for the manufacture of said pipe in California; or (b) where said properties are part of or relate to facilities for the manufacture of said pipe in any part of the United States outside of California, unless 60 days notice of the intention to make said acquisition is first given to the Assistant Attorney General in charge of the Antitrust Division. In the event plaintiff shall object to any acquisition as described in (b) hereof, American may apply to this Court for permission to make such acquisition, which may be granted upon a showing to the satisfaction of this Court that the acquisition may not substantially lessen competition or tend to create a monopoly in any line of commerce in any section of the country.

V

[*Divestiture*]

(A) Within one year from the date of the entry of this Final Judgment, defendant American shall, subject to the terms and conditions of this Final Judgment, sell all of its interest in the assets, as defined in paragraph II, hereof. Sale of such assets shall be to a purchaser acceptable to the plaintiff and to the Court.

(B) American shall take such steps as are necessary to maintain such assets until the time of sale thereof at the standard operating performance existing at the time of entry of this Final Judgment. Pending such sale, American shall not permit said assets to be diminished in capacity or turned to uses other than those existing at the time of entry of this Final Judgment.

American shall take all action which the Court may direct or approve in order to disseminate and publicize the availability for sale and to promote and effectuate the expeditious sale of such assets.

(C) American shall make known the availability of the assets for sale by customary and usual means. American shall furnish to bona fide prospective purchasers all necessary information regarding the assets and the operations carried on by American therein, and shall permit them to make such inspection of the assets as may be reasonably necessary for the above purpose.

(D) American is ordered and directed to render bimonthly written reports to the Court, with copies to the plaintiff, detailing its efforts to comply with subsection (A) above, and the results of such efforts, including every offer to buy which it received. Plaintiff or American may apply to this Court for approval or disapproval of any proposal for the sale of said facilities.

(E) The divestiture ordered and directed by this Final Judgment, when made, shall be made in good faith and shall be absolute and unqualified; provided, however, that American may acquire and enforce any bona fide lien, mortgage, deed of trust or other form of security given for the purpose of securing to American payment of any unpaid portion of the purchase price or performance of the sale transaction, as therein provided or as provided by law. In the event that American, as a result of the enforcement of any bona fide lien, mortgage, deed of trust or other form of security, reacquires possession of any of the divested assets, American shall notify the plaintiff in writing of any such repossession within thirty (30) days of such repossession. Within thirty (30) days of the date of such notification, American shall offer any such repossessed assets for sale in accordance with all the terms of this Final Judgment; and American shall, within one year thereafter, effect divestiture of such repossessed asset, subject to the prior approval of the plaintiff.

VI

[Inspection and Compliance]

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, upon reasonable notice to American made to its principal office, be permitted:

- (a) access, during the office hours of said defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession of or under the control of American relating to any of the matters contained in this Final Judgment; and
- (b) subject to the reasonable convenience of American and without restraint or interference from it, to interview its officers and employees, who may have counsel present, regarding any such matters.

Upon such written request, American shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be requested.

No information obtained by the means provided in this Section VI shall be divulged by a representative of the Department of Justice to any person other than a duly authorized representative of the executive branch of the plaintiff except in the course of legal proceedings for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VII

[Jurisdiction Retained]

Jurisdiction is retained 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 carrying out of this Final Judgment or for the modification of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

Appendix I

Completely equipped plant for the manufacture of steel water pipe in diameters from 4" to 48". Facilities include continuous straight seam pipe mills capable of handling #14 gauge to ¼" skelp; plate rolls and shears; welding equipment; cement mortar lining and coating equipment for 4" to 48" steel pipe; coal tar or asphalt lining and coating equipment for 12" to 48" steel pipe; Somastic coating equipment for 4" to 36" steel pipe; equipment to fabricate, line and coat steel pipe fittings in *these* sizes.

There are well equipped garage and maintenance shop facilities for the production and transportation equipment and mobile equipment for handling pipe and fittings within the plant includes 3-to 10-ton capacity fork-lifts and yard trucks and trailers.

These facilities are on 38.3 acres of prime industrial land in Los Angeles County with paved yard and storage areas; 193,000 square feet of industrial and administrative buildings of various construction, primarily steel frame and siding; and served by a Southern Pacific railway spur with appurtenant yard trackage.

Included in the assets to be sold but separated from these facilities by a right of way for high power electric transmission lines is an additional lot of unimproved land of approximately 11 acres, which may be sold separately, or if desired by the buyer, may be acquired as part of the above described facilities, provided, said lot has not been previously sold by American.