

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Ciba Company, Inc.; Geigy Chemical Corporation; Sandoz, Inc.; and Toms River-Cincinnati Chemical Corporation., U.S. District Court, S.D. New York, 1959 Trade Cases ¶69,403, (Jul. 9, 1959)

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United States v. Ciba Company, Inc.; Geigy Chemical Corporation; Sandoz, Inc.; and Toms River-Cincinnati Chemical Corporation.

1959 Trade Cases ¶69,403. U.S. District Court, S.D. New York. Civil No. 134-90. Filed July 9, 1959. Case No. 1390 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Practices Prohibited Price Fixing —Circulating Price Lists.—A manufacturer of dyestuffs and three companies engaged in reselling those products to others were prohibited by a consent decree from agreeing among themselves or with any other person to fix the price or other terms or conditions for the sale of those products to third persons. The three resellers were also jointly and severally prohibited from disclosing to each other the price at which they would sell dyestuffs, prior to the time that such price was announced to the trade generally. In addition, the manufacturer was prohibited from (1) disclosing to any one of the resellers the price at which any of the other resellers sold or proposed to sell dyestuffs, (2) suggesting the price at which dyestuffs should be sold to third persons, or (3) selling dyestuffs at a discount or rebate from a list of prices for the sale of such products to ultimate consumers.

Department of Justice Enforcement and Procedure—Consent Decrees—Permissive Provisions

—**“Separate” Discussions of Resale Prices.**—A consent decree which jointly and severally prohibited a manufacturer of dyestuffs and three resellers of its products from agreeing among themselves to fix the price for the sale of those products to third persons did not prohibit “separate” discussions between the manufacturer and any of the resellers concerning the price at which that reseller sold or proposed to sell the manufacturer's products to any third person.

For the plaintiff: Robert A. Bicks, Acting Assistant Attorney General; William D. Kilgore, Jr., Lewis Bernstein, Philip L. Roache, Jr., Charles F. B. McAleer, and Joseph J. O'Malley, Attorneys, Department of Justice.

For the defendants : Appleton, Rice & Perrin, by Gerhard R. Gerhard, for Ciba Co., Inc.; Cravath, Swaine & Moore, by Carlyle Maw, for Geigy Chemical Corp.; Handel & Stutnfpf, by Donald L. Stumpf, for Sandoz, Inc.; and Cahill, Gordon, Reindel & Ohl, by Robert G. Zeller, for Toms River-Cincinnati Chemical Corp.

Final Judgment

[*Consent Decree*]

SYLVESTER J. RYAN, District Judge [*In full text*] Plaintiff, United States of America, having filed its complaint herein on May 29, 1958, the defendants having appeared and filed their answers to the complaint denying the substantive allegations thereof, and the parties hereto, 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 said judgment constituting evidence or an admission by any party hereto 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 or admission by any party hereto in respect of any such issue, and upon consent of all parties hereto, it is hereby Ordered, Adjudged and Decreed, as follows:

I.

[*Jurisdiction*]

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 against the defendants under Section 1 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.

[*Definitions*]

As used in this Final Judgment:

- (A) "Person" shall mean an individual, partnership, firm, corporation or any other legal entity;
- (B) "Toms River" shall mean the defendant, Toms River-Cincinnati Chemical Corporation;
- (C) "Defendants" shall mean the defendants Toms River, Ciba Company, Inc., Geigy Chemical Corporation and Sandoz, Inc., and each of them;
- (D) "Dyestuffs" shall mean any substance which when dissolved in a suitable bath, is capable of and is used to color vegetable, animal and artificial fibers and products. "Dyestuffs" as opposed to pigments, are soluble in the vehicle in which used.

III.

[*Applicability*]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its officers, directors, agents, employees, subsidiaries, successors and assigns, and to those persons in active concert or participation with any defendant who receives actual notice of this Final Judgment by personal service or otherwise, but shall not impose any obligation to take or omit any action outside the United States. This Final Judgment shall not apply to transactions between a defendant (other than Toms River) and its direct or indirect parent, or between a defendant and its subsidiaries (other than Toms River) or its directors, officers, agents and employees or any of them when acting in such capacity.

IV.

[*Price Fixing*]

- (A) Defendants are jointly and severally enjoined and restrained from, directly or indirectly, entering into, adhering to, maintaining or enforcing any contract, agreement, understanding, plan or program, among themselves or with any other person, to fix, establish, maintain or determine the price or prices or other terms or conditions of the sale of dyestuffs manufactured in the United States to third persons;
- (B) Defendants, Ciba Company, Inc., Geigy Chemical Corporation, and Sandoz, Inc., are jointly and severally enjoined and restrained from disclosing, directly or indirectly, to each other the price, or other terms or conditions of sale, at which it will sell dyestuffs, prior to the time such price or terms or conditions are announced to the trade generally;
- (C) Defendants are enjoined and restrained from entering into, adhering to, maintaining or enforcing any contract, agreement or understanding among themselves which is contrary to or inconsistent with any of the provisions of this Final Judgment.

V.

[*Circulating Price Lists*]

Defendant Toms River is enjoined and restrained from, directly or indirectly:

- (A) Disclosing to any one of the other defendants the prices, or other terms or conditions of sale, at which dyestuffs are, or are proposed to be, sold by any other defendant to any third person;

(B) Suggesting or attempting to suggest the price, or other terms or conditions of sale at which dyestuffs shall be sold to any third person;

(C) Communicating or otherwise disclosing to any officer, director, agent, employee or other representative of any other defendant the price or other terms or conditions of sale at which dyestuffs are, or are proposed to be, sold by any other defendant to any third person;

(D) Selling or offering to sell dyestuffs at a discount or rebate from a list of prices for the sale of dyestuffs to ultimate consumers.

VI.

[*Permissive Provision—Resale Prices*]

Nothing in subsections (A) or (C) of Section IV or subsection (B) of Section V shall be deemed to prohibit any separate discussions between Toms River and any other defendant or other customer, concerning the prices, or other terms or conditions of sale, at which dyestuffs manufactured by Toms River are, or are proposed to be, sold by any such defendant or customer to any third person.

VII.

[*Enforcement and Compliance*]

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

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

(2) Subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of the defendant, who may have counsel present, regarding any such matters.

(B) Upon such written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, said defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment;

(C) No information obtained by the means provided in this Section VII 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 plaintiff except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VIII.

[*Jurisdiction Retained*]

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