

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. General Dynamics Corporation, Air Reduction Company, Inc., (Chemetron Corporation) and Olin Mathieson Chemical Corporation., U.S. District Court, E.D. New York, 1963 Trade Cases ¶70,891, (Oct. 17, 1963)**

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United States v. General Dynamics Corporation, Air Reduction Company, Inc., (Chemetron Corporation) and Olin Mathieson Chemical Corporation.

1963 Trade Cases ¶70,891. U.S. District Court, E.D. New York. Civil Action No. 61 C 615. Entered October 17, 1963. Case No. 1623 in the Antitrust Division of the Department of Justice.

**Sherman and Clayton Act**

**Tying Arrangements—Predatory Price Cutting—Resale Price Fixing—Carbon Dioxide and Storage Equipment—Consent Judgment.**—A manufacturer of carbon dioxide was prohibited under the terms of a consent judgment from tying in the supplying of storage tanks to customers with the purchase of carbon dioxide, and required to sell or lease storage equipment without regard to a customer's source of supply of carbon dioxide. Also, the manufacturer was prohibited from charging lower prices for carbon dioxide in one area of the United States than it charges in another area for the purpose of destroying or eliminating competition, and from fixing distributors' resale prices.

For the plaintiff: William H. Orrick, Jr., Assistant Attorney General, W. D. Kilgore, Jr., Bernard M. Hollander, Alfred Karsted, and Robert W. T'obin, Attorneys, Department of Justice.

For the defendant: Kirkland, Ellis, Hodson, Chaffetz & Masters, Chicago, Illinois, by E. Houston Harsha.

**Final Judgment**

MISHLER, Judge [ *In full text*]: Plaintiff, United States of America, having filed its complaint herein on August 22, 1961, and the defendant Chemetron Corporation having appeared and filed its answer denying the substantive allegations of such complaint, and plaintiff and said defendant, by their respective attorneys, having consented to the making and entry of this Final Judgment, and without trial or adjudication of any issue of fact or law herein;

Now, therefore, before any testimony has been taken and without trial or adjudication of any issue of fact or law herein and based upon the consent of plaintiff and the said defendant, it is hereby

Ordered, adjudged and decreed as follows :

I

**[ Sherman and Clayton Acts ]**

This Court has jurisdiction of the subject matter hereof and of the parties consenting hereto. The complaint states claims for relief against the defendant Chemetron Corporation 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, and under Section 3 of the Act of Congress of October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", commonly known as the Clayton Act, as amended.

II

**[ Definitions ]**

As used in this Final Judgment:

- (A) "Chemetron" shall mean the defendant Chemetron Corporation, a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Chicago, Illinois;
- (B) "Person" shall mean any individual, partnership, firm, association, corporation, governmental agency or other legal or business entity;
- (C) "Carbon Dioxide" shall mean carbon dioxide in solid form (dry ice), in liquid form, (low pressure bulk carbon dioxide), or in gaseous form, (carbon dioxide cylinder gas);
- (D) "Distributor" shall mean any person who purchases and resells Carbon Dioxide for its own account;
- (E) "Storage Tanks and Related Equipment" shall mean equipment (other than cylinders) designed and used for the conversion of dry ice to, or storage of, liquid carbon dioxide on the premises of customers, any circulating pumps, cylinder filling pumps and process lines or piping to the point or points of consumption which are connected to or used in conjunction therewith.

### III

#### [ *Applicability* ]

The provisions of this Final Judgment applicable to defendant Chemetron shall apply also<sup>1</sup> to its officers, directors, agents, servants, employees, subsidiaries, successors and assigns, and to all Persons in active concert or participation with such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

### IV

#### [ *Practices Prohibited* ]

Defendant Chemetron is:

- (A) Enjoined and restrained from entering into, adhering to, or claiming any rights under any combination, conspiracy, contract, agreement, understanding, plan or program which has the purpose or effect of:
  - (1) Allocating or dividing customers, territories, markets or fields for the manufacture, sale or distribution of carbon dioxide;
  - (2) Determining, fixing, maintaining, or adhering to prices, price lists, differentials, discounts, or other terms or conditions for the sale or distribution of carbon dioxide to third persons; provided that Section IV(A) shall have no application to transactions with persons who are agents of such defendant.
- (B) Enjoined and restrained from requiring distributors to resell carbon dioxide at prices set or determined by said defendant;
- (C) Enjoined and restrained from restricting or attempting to restrict in any manner:
  - (1) The quantity of carbon dioxide which any Person may manufacture or produce; or
  - (2) The quantity of carbon dioxide which any person may sell to any other person over and above what is sold to such defendant.
- (D) Ordered and directed within sixty (60) days following the date of the entry of this Final Judgment, to notify, in writing, all persons selling carbon dioxide to said defendant, that any provision in any existing contracts, agreements, or understandings between the defendant and such persons, which restricts or attempts to restrict the sale of carbon dioxide not purchased by said defendant, is prohibited by Court order and such provision or restriction will not be enforced in any manner by the said defendant;
- (E) Enjoined and restrained from promulgating, exacting or maintaining in any part of the United States a price or prices for the sale of carbon dioxide which is lower than the price or prices exacted by said defendant elsewhere in the United States for the purpose of destroying competition or eliminating a competitor in such part of the United States.

V

[ *Prices* ]

Defendant Chemetron is ordered and directed, individually and independently, to issue new price schedules for carbon dioxide, based upon an independent reviewr, at 3:00 P. M. Eastern Standard Time on the sixtieth (60th) day following the effective date of this Section V, schedules to become effective thirty (30) days thereafter, provided however nothing herein shall prevent said defendant from deviating from, modifying or otherwise changing the prices or price schedules issued thereunder after the publication date thereof.

VI

[ *Equipment Sales and Leases* ]

Defendant Chemetron is:

(A) Ordered and directed, upon the request of any user of carbon dioxide, not including any distributor, manufacturer, supplier or seller of carbon dioxide, whether or not such user purchases carbon dioxide from Chemetron, at the option of such user (a) to sell new or used storage tanks and related equipment or (b) to lease for such period or periods as Chemetron shall from, time to time determine, new or used storage tanks and related equipment, to such user on such nondiscriminatory terms and conditions as may be offered by Chemetron to other users of carbon dioxide in the same area, other than competitors of Chemetron, and such terms and conditions are to be set forth in a schedule or schedules to be published and circulated among purchasers of Chemetron's liquid carbon dioxide and dry ice used in converters not later than sixty (60) days following the effective date of this subsection (A); provided, however, that such schedule or schedules need not be circulated among such purchasers of Chemetron's liquid carbon dioxide and dry ice used in converters or other users of liquid carbon dioxide and dry ice used in converters or storage tanks and related equipment already under contract on the effective date of this subsection (A) until sixty (60) days prior to the expiration of such contracts or, in the case of such purchasers under contracts expiring more than one (1) year following the effective date of this Section VI, until sixty (60) days prior to the expiration of such one (1) year period; and provided further that Chemetron has storage tanks and related equipment available in the area and that such user meets the necessary credit requirements or other usual business requirements of Chemetron with respect to such user's financial responsibility to purchase or lease storage tanks and related equipment; and provided further that nothing in this subsection shall prevent Chemetron from deviating from such schedule or schedules for the purpose of meeting the equally low price or terms or conditions of a competitor or at any time from modifying or otherwise changing such schedule or schedules;

(B) Enjoined and restrained from offering to sell or lease or selling or leasing, storage tanks and related equipment to any person conditioned upon an agreement or understanding that such person shall purchase carbon dioxide from Chemetron or any source designated by such defendant;

(C) Enjoined and restrained from offering to sell, or selling, carbon dioxide to any person conditioned upon an agreement or understanding that such person buy or lease any storage tanks and related equipment from Chemetron or any source designated by such defendant;

(D) Enjoined and restrained from refusing to sell upon request carbon dioxide to a person having a storage tank and related equipment not belonging to Chemetron; provided, however, that nothing herein contained shall require the sale of carbon dioxide for the filling of storage tanks when any legal business reason exists for such refusal or when such sale is in violation of the laws or regulations of any State or Federal Government, or in violation of any contract between such person and any seller of carbon dioxide;

(E) Ordered and directed at the time of any lease of storage tanks and related equipment, to include in the lease agreement a clause which provides in effect that the owner of the storage tanks and related equipment specifically consents to the installation in, or filling of, said storage tanks and related equipment with carbon dioxide manufactured by any other person, subject to the provisions of Section VII(B); provided, however, that

such consent shall not apply to a lessee of such storage tanks and related equipment whenever such lessee is under contract to purchase his requirements of carbon dioxide from Chemetron;

(F) Enjoined and restrained from entering into any contract for the sale of carbon dioxide to any person which has the effect of obligating such person to purchase its requirements of carbon dioxide from Chemetron for a period of more than one (1) year; provided, however, that this sub section (F) shall not prevent the inclusion in any contract for the sale of carbon dioxide of a provision to the effect that such contract will be renewed for successive one-year periods unless the purchaser of such carbon dioxide shall notify Chemetron, within a reasonable time prior to the expiration of such contract or of any such period, of an intention to terminate such contract; and provided further in such an event that such purchaser also is given in the contract the option, at the time of entering into such contract, to have a provision to the effect that the contract shall be renewed only upon the exchange of notices between the parties expressing an intention to renew the contract, in lieu of the aforesaid renewal provision;

(G) Ordered and directed:

(1) Not to renew or extend any existing contract or agreement with any purchaser of carbon dioxide which is not consistent with the provisions of this Section VI, and to cancel or otherwise terminate any existing agreement or contract with any purchaser of carbon dioxide which is not consistent with the provisions of this Section. VI, whenever Chemetron has the right to do so;

(2) To notify, in writing, not later than sixty (60) day;? prior to the expiration of one (1) year following the effective date of this Section VI, each person holding a contract having a time period or duration of more than one year to run from the date following the effective date of this Section VI that Chemetron will waive any obligation by such person to purchase carbon dioxide from Chemetron in excess of one (1) year from the first annual anniversary date of such contract after the date of entry of this Final Judgment, upon condition, where applicable, that such person at the end of such period either returns to Chemetron the storage tank and related equipment of Chemetron in the possession of such person, or purchases or leases such storage tank and equipment from Chemetron.

## VII

### [ *Permissive Provisions* ]

(A) Sections VI(A), (B), (C) and (E) shall have no application to transactions with persons who are distributors or agents of Chemetron, and nothing contained therein shall require such defendant to sell or lease storage tanks and related equipment to other persons engaged in the sale or distribution of carbon dioxide on terms and conditions that such defendant offers storage tanks and related equipment to its own distributors or agents.

(B) Nothing contained in Section VI shall be deemed to invalidate or prohibit provisions in leasing agreements with respect to storage tanks and related equipment to the effect that Chemetron is to be indemnified or made harmless by the lessee of storage tanks and related equipment from any damages to the storage tanks and related equipment, and from any consequential damages sustained by said defendant resulting directly or indirectly from the use in such storage tanks and related equipment of carbon dioxide obtained from sources other than the defendant leasing such storage tanks and related equipment, which is not of like grade or quality to that of such defendant. Chemetron may provide that the burden of proving the question of like grade and quality shall be on the lessee.

## VIII

### [ *Territorial Limitation* ]

This Final Judgment shall be construed as relating only to commerce within the United States, its territories and possessions.

## IX

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**[ Inspection and Compliance]**

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on written request by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant Chemetron at its principal office, be permitted, subject to any legally recognized privilege:

(A) Reasonable access during office hours, to all the books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant relating to any of the matters covered in this Final Judgment; and

(B) Subject to the reasonable convenience of such defendant and without restraint or interference from such defendant to conduct interviews regarding any such matters with officers and employees of such defendant, who may have counsel present.

Upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, such defendant shall submit such written reports with respect to any of the matters covered in this Final Judgment as from time to time may be reasonably necessary for the enforcement of this Final Judgment.

No information obtained by the means provided in this Section IX shall be divulged by any representatives of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of plaintiff except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

**X**

**[ Effective Date]**

The provisions of Sections V and VI of this Final Judgment shall not become effective until the entry of Final Judgments in this action, not subject to further review, against the remaining defendants herein.

**XI**

**[ Jurisdiction Retained]**

Jurisdiction is retained for the purpose of enabling any party consenting 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 modification or termination of any of the provisions herein, for the enforcement of compliance therewith and the punishment of violations thereof.