

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,
v.
W. R. GRACE & CO.,
Defendant.

CIVIL ACTION NO. 72 C 414

Entered: February 29, 1972

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on January 28, 1972, and plaintiff and defendant 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 constituting evidence or 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 the consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter herein and of the parties consenting hereto. The Complaint states claims upon which relief may be granted against the defendant under Sections 1 and 2 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

For purpose of this Final Judgment:

(A) Defendant shall mean W.R. Grace & Co. and any domestic company which it in fact controls, irrespective of the degree of stock ownership;

(B) Job placements shall mean awards made to a contractor or supplier for work to be done or materials to be supplied after bids have been obtained in response to bid inquiries issued by defendant for particular projects;

(C) Capital expenditures shall mean contract purchases that add to defendant's fixed assets or that have the effect of increasing the capacity, efficiency, life span, or economy of operation of defendant's existing fixed assets.

III

The provisions of this Final Judgment shall apply to defendant, and its officers, directors, agents, employees, 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. This Final Judgment shall not apply to acts or transactions outside of the United States which do not substantially affect the interstate or foreign commerce of the United States.

IV

Defendant is enjoined and restrained from:

(A) Purchasing products, goods or services from, or entering into or adhering to any contract, agreement or understanding with, any actual or potential supplier on the condition or understanding that purchases by defendant from such supplier

will be based or conditioned upon defendant's sales to such supplier;

(B) Selling products, goods or services to, or entering into or adhering to any contract, agreement or understanding with, any actual or potential customer on the condition or understanding that defendant's purchases of products, goods or services from such customer will be based or conditioned upon defendant's sales to such customer;

(C) Communicating to defendant's actual or potential suppliers or contractors that:

(1) in purchasing products, goods or services preference will be given to any such supplier or contractor based or conditioned upon defendant's sales to such supplier or contractor;

(2) in compiling bidder lists and in awarding job placements for capital expenditures preference will be given to any such contractor or supplier based or conditioned upon defendant's sales to such contractor or supplier;

(3) defendant is entitled to participate in the purchases by any such supplier or contractor of products or goods sold or services provided by defendant based or conditioned upon defendant's purchases from such supplier or contractor;

(D) Communicating to prime contractors or subcontractors that in awarding subcontracts or purchasing material from material suppliers preference is to be given to any such subcontractor or material supplier based or conditioned upon defendant's sales to such subcontractor or material supplier;

(E) Comparing or exchanging statistical data with any supplier or contractor to ascertain, facilitate or further any relationship between purchases by defendant from such supplier or contractor and sales by defendant to such supplier or contractor;

(F) Engaging in the practice of discussing with any supplier, contractor or customer the relationship between purchases by defendant from such supplier, contractor or customer and sales by defendant to such supplier, contractor or customer of the defendant;

(G) Communicating, in its dealings with any of its customers or suppliers, the facts of purchases by any business entity in which defendant has an ownership interest, to promote sales to such customers or suppliers;

(H) Directing, recommending or suggesting that any business entity in which defendant has an ownership interest (but not constituting control as described in II (A)) purchase from any of the defendant's customers or potential customers, in order to reciprocate for purchases made by, or promote sales by defendant to, such customers or potential customers.

(I) Communicating to particular suppliers the fact of purchases from such suppliers by one of defendant's subsidiaries or divisions to promote sales to such suppliers by other subsidiaries or divisions of the defendant;

(J) Agreeing with particular suppliers that such suppliers will purchase from certain of defendant's customers in order to reciprocate for purchases made by the defendant from such suppliers;

(K) Agreeing with particular suppliers that such suppliers shall attempt to persuade other companies to buy from the defendant in order to reciprocate for purchases made by the defendant from such suppliers.

V

Defendant is enjoined and restrained from:

(A) Preparing or maintaining statistical compilations for any supplier or any class or grouping of suppliers which compare

purchases from suppliers who supply products, goods or services to defendant with sales by defendant to such suppliers;

(B) Engaging in the practice of issuing to personnel with primary purchasing responsibilities any lists, notices or other modes of specification which identify customers and their purchases from defendant or which specify or recommend that purchases be made from any of such customers;

(C) Engaging in the practice of issuing to personnel with primary sales responsibilities any lists, notices or other modes of specification which pertain to purchases that have been made by defendant from particular customers;

(D) Referring lists of bids received on capital expenditures to any personnel having primary sales responsibilities for recommendations for job placements.

VI

Defendant is ordered and directed to:

(A) Refrain from establishing or maintaining any offices or positions having duties relating to activities, programs or objectives to promote trade relations involving reciprocal purchasing arrangements;

(B) Withdraw from all personnel with sales or purchasing responsibilities any lists or compilations described in Section V above as currently may be in their possession;

(C) Refrain from being a member of and to prohibit its officers and employees from belonging to or participating in the activities of, or contributing anything of value to, any association whose activities, programs or objectives are to promote trade relations involving reciprocal purchasing arrangements;

(D) Issue within sixty (60) days to each of its officers and employees having sales or purchasing responsibilities a policy directive stating that:

(1) all officers and employees are prohibited from purchasing products, goods or services from, or entering into or adhering to any contract, agreement or understanding with, any actual or potential supplier on the condition or understanding that purchases by defendant from such supplier will be based or conditioned upon defendant's sales to such supplier;

(2) all officers and employees are prohibited from selling products, goods or services to, or entering into or adhering to any contract, agreement or understanding with, any actual or potential customer on the condition or understanding that purchases by defendant of products, goods or services from such customer will be based or conditioned upon defendant's sales to such customer;

(3) all officers and employees are prohibited from soliciting bids for any capital expenditures from, or awarding job placements to, or entering into or adhering to any contract, agreement or understanding for the solicitation of bids from or award of job placements to, any contractor or supplier, upon the condition or understanding that solicitations or awards by defendant will be based or conditioned upon defendant's sales to such contractor or supplier;

(4) violation of this policy directive may subject any offending officer or employee to punishment by the Court for violation of this Final Judgment;

(E) Furnish, within sixty (60) days after the entry hereof, a copy of this Final Judgment to, and, by written notice satisfactory to the plaintiff, advise each supplier from whom defendant has purchased more than \$25,000 or customer to whom it has sold more than \$50,000 of products, goods or services during any of the years 1968 through 1970, that:

(1) defendant will refrain from establishing or maintaining any offices or positions having duties that relate to activities, programs or objectives to promote trade relations involving reciprocal purchasing arrangements;

(2) all officers and employees are prohibited from purchasing products, goods or services from, or entering into or adhering to any contract, agreement or understanding with, any actual or potential supplier on the condition or understanding that purchases by defendant from such supplier will be based or conditioned upon defendant's sales to such supplier;

(3) all officers and employees are prohibited from selling products, goods or services to, or entering into or adhering to any contract, agreement or understanding with, any actual or potential customer on the condition or understanding that purchases by defendant of products, goods or services from such customer will be based or conditioned upon defendant's sales to such customer;

(4) all officers and employees are prohibited from soliciting bids for any capital expenditures from, or awarding job placements to, or entering into or adhering to any contract, agreement or understanding for the solicitation of bids from or award of job placements to, any contractor or supplier, upon the condition or understanding that solicitations or awards by defendant will be based or conditioned upon defendant's sales to such contractor or supplier.

VII

The defendant is ordered to file with the plaintiff, on each anniversary date of this Final Judgment, a report setting forth the steps which it has taken during the prior year to advise the defendant's appropriate officers, directors and employees of its and their obligations under this Final Judgment.

VIII

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose:

(A) Any duly authorized representative or representatives of the Department of Justice shall, upon written request by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant, made to its principal office, in New York, New York, be permitted subject to any legally recognized privilege:

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

(2) subject to the reasonable convenience of defendant and without restraint or interference from it, to interview officers or employees of 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, defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as from time to time may be requested.

No information obtained by the means provided for in this Section VIII 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 plaintiff is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

IX

Nothing contained in this Final Judgment shall:

(A) Prohibit defendant from entering into arrangements (whether tolling, purchase and sale or otherwise) for the use of

its products or goods in their conversion or fabrication into other forms thereof for its own use or for resale or from converting products or goods for others;

(B) Prohibit defendant from contracting for construction work or for the manufacture, installation of equipment or facilities for its own use on the condition that defendant's products, goods or services are to be used in the performance of such contracts;

(C) Prohibit defendant from offering, in connection with the sale of its products or goods, to purchase from or convert for purchasers thereof byproducts, such as scrap and spent acid, generated by them in their operations in an amount and of a kind which does not exceed the amount and kind of byproducts, such as scrap and spend acid, normally generated by them in the use of defendant's products or goods; provided, however, that such purchasers shall not be obligated to sell such byproducts to defendant or to have them converted by defendant as a condition of defendant's sale to such purchasers;

(D) Prohibit defendant from exchanging (by purchase and sale or otherwise) materials or products of like or substantially like kinds.

X

Jurisdiction is retained for the purpose of enabling either 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 modification of any of the provisions contained herein, for the enforcement of compliance therewith, and the punishment of the violation of any of the provisions contained herein.

XI

This Final Judgment shall terminate and cease to be effective ten (10) years from the date of the entry of this Final Judgment.

DATED: February 29, 1972

/s/ LLOYD F. MacMAHON
UNITED STATES DISTRICT JUDGE