

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. General Tire & Rubber Co., Aerojet-General Corp., A. M. Byers Co. and RKO General, Inc., U.S. District Court, N.D. Ohio, 1971 Trade Cases ¶73,303, (Oct. 21, 1970)

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United States v. General Tire & Rubber Co., Aerojet-General Corp., A. M. Byers Co. and RKO General, Inc. 1971 Trade Cases ¶73,303. U.S. District Court, N.D. Ohio, Eastern Division. Civil Action No. C-67-155. Entered October 21, 1970. Case No. 1929 in the Antitrust Division of the Department of Justice.

Sherman Act

Monopoly—Buying Power—Tire Manufacturer—Reciprocal Purchasing Agreements— Consent Decree.
—A tire manufacturer, also making and selling a wide variety of products in the fabric, chemical, plastic, rubber and metal industries, and its three subsidiaries were barred by a consent decree from purchasing products or services from any supplier on the condition that the purchases will be based on the firms' sales to the supplier; from discussing with any supplier or customer the relationship of purchases by any firm from any supplier and sales by any firm to any supplier or customer, or from comparing statistical data to further such a relationship; from maintaining statistical compilations that compare sales to and purchases from suppliers; and from communicating to any supplier, prime contractor or subcontractor that preferences will be given in purchasing products or services from them based on sales by the firms to them. The manufacturer was required to abolish the position of trade relations director and a subsidiary was required to abolish the position of corporate relations director; the firms were forbidden from assigning any trade relations function to any employee. The firms were required to publish and circulate to all sales and purchasing personnel a memorandum stating the ban on reciprocal dealing. In addition, the firms were prohibited from telling personnel with sales responsibilities about purchases from particular companies and from telling purchasing personnel about sales to particular companies. The firms were compelled to require their purchasing agents, consistent with the overall objective of maintaining adequate and reliable sources of supply, to purchase on the basis of price, quality, service and financial responsibility and to ignore completely any consideration relating to the potential supplier's status as a customer. The firms and their officers and employees must refrain from belonging to, participating in, or contributing anything of value to a promoter of trade relations or any other association or group whose activity, program or objectives are to promote trade relations.

For the plaintiff: Richard W. McLaren, Baddia J. Rashid, Lewis Bernstein, W. D. Kilgore, Jr., C. Brooke Armat, Joseph T. Maioriello, Harry N. Burgess, Bernard J. O'Reilly, James M. Rhodes and Irene A. Bowman, Attys., Antitrust Div., Dept. of Justice.

For the defendants: William E. Willis, of Sullivan & Cromwell.

Final Judgment

BATTISTI, D. J.: The complaint having been filed herein on March 2, 1967, and the defendants having appeared and having denied the substantive allegations thereof, and plaintiff and the defendants, by their 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 issue of fact or law herein, and the Court having considered the matter and being duly advised:

Now, Therefore, before the taking of any testimony 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:

[*Jurisdiction*]

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 defendants 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," as amended, commonly known as the Sherman Act, as amended.

II

[*Applicability*]

The provisions of this Final Judgment shall apply to each defendant and their respective officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

III

[*Definition*]

As used herein, the term "supplier" shall include actual and potential suppliers, bidders, firms invited or solicited to bid, contractors, subcontractors and suppliers of suppliers.

IV

[*Reciprocity*]

Defendants, and each of them, are hereby enjoined and restrained from:

- (A) Purchasing products, goods or services from, or entering into or adhering to any contract, agreement or understanding with, any supplier on the condition or understanding that purchases by any defendant from any supplier will be based or conditioned upon any defendant's sales to any 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 any defendant's purchases of products, goods or services from such customer will be based or conditioned upon any defendant's sales to such customer
- (C) Communicating to any defendant's suppliers that:
 - (1) in purchasing products, goods or services preference will be given, to any supplier based or conditioned upon defendant's sales to any supplier;
 - (2) any position on any bidding list or any status as a qualified bidder be based or conditioned on any defendant's sales to any supplier; or
 - (3) defendants are entitled to participate in the purchases by any supplier of products or goods sold or services provided by any defendant based or conditioned upon any defendant's purchases from any supplier;
- (D) Communicating to any prime contractor or subcontractor 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 any defendant's sales to such subcontractor or material supplier;
- (E) Comparing or exchanging statistical data with any supplier to ascertain, facilitate or further any relationship between purchases by any defendant from any supplier and sales by any defendant to any supplier;
- (F) Engaging in the practice of discussing with any supplier or customer the relationship between purchases by any defendant from any supplier and sales by any defendant to any supplier or customer;
- (G) Communicating, in its dealings with any of its customers or suppliers, the fact of purchases of 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 any ownership interest 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 defendants in order to reciprocate for purchases made by the defendant from such suppliers.

V

[*Compiled Information*]

Defendants, and each of them, are 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 any defendant with sales by any defendant to such suppliers;

(B) Issuing to personnel with sales responsibilities any lists, notices or other modes of specification which identify suppliers or their sales to any defendant;

(C) Issuing to personnel with purchasing responsibilities lists, notices or other modes of specification which identify customers or their purchases for any defendant or which recommend or specify that purchases be made from any of such customers;

(D) Referring lists of bids to personnel with sales responsibilities for recommendation as to purchases.

VI

[*Antireciprocity Steps*]

Defendants are hereby ordered and directed as follows:

(A) Defendant The General Tire & Rubber Company shall abolish the position of Director of Trade Relations and defendant RKO General, Inc. shall abolish the position of Director of Corporate Relations; and each defendant shall refrain from having a successor office or position and from assigning a trade relations function to any office or position.

(B) Defendants shall 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) Defendants shall refrain from belonging to and prohibit their officers and employees from belonging to or participating in the activities of, or contributing anything of value to the Trade Relations Association, Inc. or to any association or group whose activity, program or objectives are to promote trade relations.

(D) Defendants by their presidents shall issue, in a form satisfactory to plaintiff, within sixty (60) days to each of their officers and to each of their employees having sales or purchasing responsibilities, and shall adopt, maintain and enforce as their own corporate policy a memorandum instructing officers and employees 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 supplier to the defendant on the condition or understanding that purchases by any defendant from any supplier will be based or conditioned upon defendant's sales to any supplier;

(2) all officers and employees are prohibited from selling products, goods or services of any defendant to, or entering into or adhering to any contract, agreement or understanding with, any actual or potential customer of

any defendant on the condition or understanding that purchases by any defendant of products, goods or services from such customer will be based or conditioned upon any defendant's sales to such customer;

(3) all officers and employees with purchasing responsibilities are required to adhere to the policy that, consistent with the over-all objective of maintaining adequate and reliable sources of supply, all purchasing decisions must be based upon consideration of price, quality, service and financial responsibility, and no purchasing decision inconsistent with such policy will be excused because consideration or recognition was given to the fact that a particular supplier buys or uses, or does not buy or use, to any degree, the products or services made or sold by any defendant, or by any customer or potential customer of the defendants and a decision to place any firm on any bidding list or to designate any firm as a qualified bidder shall be included as a purchasing decision;

(4) all officers and employees are prohibited from influencing, requesting or suggesting to any officer or employee with purchasing responsibilities to make any exception of the foregoing policy on the basis of any firm's purchase or use, or failure to purchase or use, products or services made or sold by the defendants, or by any customer or potential customer of the defendants; and

(5) all officers and employees having sales responsibilities are prohibited from utilizing the purchases of any defendant in any communication or conversation with any customer or prospective customer for the purpose of promoting the sale of any defendant's products or services or the products or services of any company affiliated with any defendant;

(E) Defendant, The General Tire & Rubber Company, shall furnish, within sixty (60) days after the entry hereof, a copy of this Final Judgment to any customer to whom it has sold more than \$50,000 of products, goods or services during any of its fiscal years 1967 through 1969. It shall also furnish a copy of this Final Judgment to each supplier from whom it has purchased, based on information available to its computers, more than \$25,000 of products, goods or services at any one of its four computer locations. Each of the other defendants shall furnish, within sixty (60) days after the entry hereof, a copy of this Final Judgment to each supplier from whom it has purchased or to whom it has sold more than \$50,000 of products, goods or services during any of its fiscal years 1967 through 1969. The copy of this Final Judgment shall be accompanied with a written notice satisfactory to the plaintiff.

VII

[*Compliance and Inspection*]

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 any defendant, made to its principal office, be permitted subject to any legally recognized privilege:

(1) access during the office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession, custody or under the control of such defendant 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 or employees of such 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, a 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 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 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.

VIII

[*Unaffected Activities*]

Nothing contained in this Final Judgment shall prohibit any defendant, in contracting for construction work or for the manufacture and installation of equipment and facilities for its own use, from specifying that products and goods of a defendant's manufacture are to be incorporated into such building, equipment or facilities.

IX

[*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, for the modification or termination 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.

X

[*Effective Period*]

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