

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Rockwell International Corp. and Rockwell International Holdings Limited., U.S. District Court, W.D. Pennsylvania, 1981-1 Trade Cases ¶63,875, (Dec. 22, 1980)

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United States v. Rockwell International Corp. and Rockwell International Holdings Limited.

1981-1 Trade Cases ¶63,875. U.S. District Court, W.D. Pennsylvania, Civil Action No. 80-1401, Entered December 22, 1980.

(Competitive impact statement and other matters filed with settlement: 45 *Federal Register* 69314). Case No. 2807, Antitrust Division, Department of Justice.

Clayton Act

Acquisitions: Divestiture of Stock of Foreign Firm: Potential Entrant: Lubricated Plug Valves: Consent Decree.— The dominant U. S. manufacturer of lubricated tapered plug valves and its wholly-owned subsidiary were required by a consent decree to divest themselves, within four years, of a 29.7% stock interest in a British firm that was a principal international competitor and potential entrant into the U. S. plug valve market. Pending divestiture, the companies were barred from voting the shares, influencing the British firm, and increasing their equity interest in it. Further significant acquisitions by the companies in the domestic plug valve market without the consent of the government were prohibited for a ten-year period, though the acquisition of assets of the British firm could be approved by the court if no U. S. antitrust violations would be involved.

For Plaintiff: Stanford M. Litvack, Asst. Atty. Gen., Joseph H. Widmar, John W. Clark and Frank N. Bentkover, Attys., Dept. of Justice. **For defendants:** Howrey & Simon, J. Wallace Adair, John DeQ. Briggs III, Fred E. Haynes and Laura Ross Blumenfeld, Attys., Dept. of Justice, Washington, D. C.

Final Judgment

Simmons, D. J.: Plaintiff, United States of America, having filed its Complaint herein on September 30, 1980, and plaintiff and defendants, 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 any evidence against or an 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 consent of the parties hereto, it is hereby

Ordered, Adjudged, and Decreed as follows:

I.

[*Jurisdiction*]

This Court has jurisdiction over the subject matter of this action and over each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against each defendant under [Section 7 of the Clayton Act](#), 15 U. S. C. §18.

II.

[*Definitions*]

As used in this Final Judgment:

- (A) "Rockwell" means defendant Rockwell International Corporation;
- (B) "RIHL" means defendant Rockwell International Holdings Limited;
- (C) "Serck" means Serck Limited and its officers, directors, agents, employees, subsidiaries, successors and assigns;
- (D) "Lubricated tapered plug valve" means a valve containing a vertical truncated cone-shaped plug, with a hole through its center, that rotates 90 degrees about its axis within the valve body. Lubricant is distributed through channels in the plug and body to seal the seating surfaces and facilitate operation. When the plug's hole is aligned with the pipe, fluids or gases flowing through the pipe also pass through the valve; when the plug is turned 90 degrees, the solid face of the plug blocks flow through the valve;
- (E) "Lubricated cylindrical plug valve" means a lubricated valve similar in construction and operation to the lubricated tapered plug valve except that it has a cylindrically-shaped plug instead of a truncated cone-shaped plug;
- (F) "Lubricated plug valves" means lubricated tapered plug valves and/or lubricated cylindrical plug valves;
- (G) "Person" means an individual, partnership, corporation, or any other business or legal entity; and
- (H) "Subsidiary" means a company which a person controls or has power to control or in which more than 50% of the voting securities are owned by the same person, directly or indirectly.

III.

[*Applicability*]

This Final Judgment applies to defendants and to their officers, directors, agents, employees, subsidiaries, 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, Provided however that no provision of this Final Judgment shall apply to any purchaser of all or part of RIHL's equity interest in Serck solely by virtue of such purchase.

IV.

[*Divestiture*]

(A) Within four (4) years from the date of entry of this Final Judgment, Rockwell and RIHL are hereby ordered and directed to divest themselves of all of the equity interest in Serck that each owns or controls, directly or indirectly.

(B) If Rockwell or RIHL have not sold all of the equity interest in Serck that each owns or controls, directly or indirectly, within the period specified in (A) above, the Court shall undertake, upon application by plaintiff, to appoint a Trustee for the purpose of selling any remaining equity interest. For the purpose of appointing such Trustee, the Court shall promptly receive nominations from the parties and grant a hearing to the parties as to the qualifications of any nominee. Once appointed by the Court, the Trustee shall be entitled to reasonable compensation and actual expenses to be set by the Court and paid by Rockwell or RIHL.

(C) The Trustee's primary duty shall be to sell all of Rockwell's or RIHL's remaining equity interest in Serck at such price and on such terms as may be required to effect the sale within three months after the date of his appointment. The proceeds of any such sale shall be turned over to Rockwell or RIHL immediately, and in no event later than five (5) business days after the sale of any equity interest in Serck.

(D) Notice of any sale of said equity interest in Serck by Rockwell, RIHL and/or the Trustee shall be provided to the Court and to the plaintiff's Director of Operations, Antitrust Division, Department of Justice, Washington, D. C. 20530, within twenty-four (24) hours thereafter. Such notice may be by telephone but within two (2) business days thereafter shall be confirmed in writing.

V.

[Voting; Communications]

Pending divestiture of the equity interest in Serck, neither Rockwell nor RIHL shall:

- (A) Vote or permit to be voted the Serck shares that Rockwell or RIHL owns or controls directly or indirectly;
- (B) Be represented directly or indirectly on the board of directors of Serck;
- (C) Communicate with Serck directly or indirectly for the purpose of controlling or influencing, or seeking to control or influence, Serck, Provided however that nothing in this subparagraph prohibits communications between Rockwell and Serck in connection with commercial transactions in the ordinary course of business that do not otherwise violate this Final Judgment; or
- (D) Acquire any equity interest in Serck that would increase Rockwell's and RIHL's aggregate equity interest in Serck beyond 29.7% of the total equity of Serck.

VI.

[Acquisitions]

During the effective period of this Final Judgment (but only for so long as Rockwell continues to be a competitor in the domestic market for lubricated plug valves) neither Rockwell nor RIHL shall acquire or otherwise purchase, without the permission of the Antitrust Division:

- (A) Any assets of Serck, wherever located, utilized in the manufacture, distribution, or sale of lubricated plug valves (if permission to acquire assets of Serck is denied by the Antitrust Division, Rockwell or RIHL may apply to the Court for permission to acquire such assets, which will be granted by the Court upon a showing by Rockwell or RIHL that the acquisition of assets will not violate the antitrust laws of the United States);
- (B) Any equity interest in Serck (except as may be permitted under Paragraph V(D) of this Final Judgment);
- (C) More than one (1) percent of the equity interest in any person that manufactures, distributes or sells lubricated plug valves in the United States; or
- (D) Any assets of any person used in the manufacture, distribution or sale of lubricated plug valves in the United States.

VII.

[Inspections]

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

- (A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant made to its principal office, be permitted:
 - (1) Access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, who may have counsel present, 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, employees and agents of such defendant, who may have counsel present, regarding any such matters.
- (B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to a defendant's principal office, such defendant shall submit such written reports as may be requested, under oath if requested, with respect to any of the matters contained in this Final Judgment.

No information or documents 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 United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(C) If at the time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

VIII.

[Expiration]

This Final Judgment will expire on the tenth anniversary of its date of entry.

IX.

[Retention of Jurisdiction]

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 or 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 hereof, for the enforcement of compliance herewith, or for the punishment of any violation hereof.

X.

[Public Interest]

Entry of this Final Judgment is in the public interest.