

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
) Civil Action No. 72-285
 v.)
) Entered: May 17, 1972
 H. K. PORTER COMPANY, INC.,)
)
 Defendant.)

FINAL JUDGMENT

Plaintiff, United States of America having filed its complaint herein on April 12, 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 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 purposes of this Final Judgment:

(A) "Person" means any individual, corporation, partnership, association, firm or other business or legal entity;

(B) "Purchasing decision" shall include any decision, at any stage in the purchasing process, as to the selection of suppliers, the allocation of purchases among suppliers, the purchase of any goods or services, the placing of any firm on a bidders list, the designation of any firm as a qualified bidder, the selection of a winning bidder or the continuance or discontinuance of purchases from any supplier.

(C) "Supplier" includes but is not limited to, both actual and potential suppliers of any goods, commodities or services; lessors as well as sellers; contractors; in-plant cafeteria and vending operators; banks; insurance companies; and transportation companies. The term shall also include suppliers of suppliers.

(D) "Customer" includes but is not limited to both actual and potential customers for any goods, commodities or services; lessees as well as purchasers; contractors; in-plant cafeteria and vending operators; banks; insurance companies; and transportation companies. The term shall also include customers of customers.

(E) The terms "purchase" and "sale" include, but are not limited to, both actual and potential purchases or sales, increases in purchases or sales and potential increases in purchases or sales. The terms "purchase" and "sale" shall also include the purchase or sale of transportation service or any arrangement covering the use of any transportation company's services. The terms "purchase" and "sale" cover both products and services and any combination thereof, including construction and engineering service, and any transfer of any property interest including but not limited to leaseholds, bank deposits, and arrangements for in-plant feeding or vending service.

(F) "Trade Relations" shall mean and include any policy, program or activity which involves the use of purchases to aid, influence, or promote sales to suppliers and/or the consideration of sales to particular suppliers as a factor in purchasing decisions.

III

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

IV

Defendant is hereby enjoined and restrained from:

(A) Practicing trade relations;

(B) Using its purchases to promote or maintain its sales to its suppliers;

(C) 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 the defendant from such supplier will be based or conditioned upon defendant's sales to such supplier;

(D) Selling products, goods or services to, or entering into or adhering to any contract, agreement or understanding with any 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;

(E) Communicating:

(1) to any person that defendant will consider its sales to any customer or supplier as a factor in any purchasing decision;

(2) to any supplier or customer that it should consider defendant's purchases from it as a factor in any purchasing decision;

(F) 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 defendant's sales to such subcontractor or material supplier;

(G) 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

(H) Discussing with any supplier or customer any relationship between purchases by defendant from any supplier and sales by defendant to any customer;

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

(J) Directing, recommending or suggesting that any business entity in which defendant has an ownership interest purchase from any of the defendant's customers in order to reciprocate for purchases made by, or promote sales by defendant to such customers;

(K) 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 any other subsidiary or division of the defendant;

(L) Agreeing with any supplier that such supplier will purchase from any of defendant's customers in order to reciprocate for purchases made by the defendant from such supplier;

(M) Agreeing with any supplier that such supplier shall attempt to persuade other companies to buy from the defendant in order to reciprocate for purchases made by the defendant from such supplier;

(N) Holding any meeting at which both purchasing and sales personnel of the defendant and any representative of a

customer or supplier are present, or using purchasing personnel to introduce suppliers to sales personnel, or using sales personnel to introduce customers to purchasing personnel; and

(E) Using the purchases by a foreign subsidiary to promote the defendant's domestic sales or using the defendant's domestic purchases to promote the sales of a foreign subsidiary.

V

Defendant is enjoined and restrained from:

(A) Considering its sales to any customer or supplier as a factor in any purchasing decision;

(B) Preparing or maintaining (except as permitted by Paragraph VI(B) infra) statistical compilations for any supplier or any class or grouping of suppliers which compare purchases from such suppliers with sales by defendant to such supplier or suppliers.

(C) Giving or showing any defendant's vendor report or commodity purchase report to any sales personnel, or otherwise providing sales personnel with an identification of defendant's suppliers or the dollar amount of purchases from any supplier;

(D) Giving or showing to any purchasing agent any defendant's customer list or sales report which identifies customers, or otherwise providing purchasing personnel with an identification of defendant's customers or the dollar amount of defendant's sales to any customer;

(E) Referring any list of bids to personnel with sales responsibilities for recommendation as to purchases; and

(F) Considering the sales of a foreign subsidiary to any customer or supplier as a factor in any purchasing decision where the purchase is made in the commerce of the United States.

VI

Defendant is hereby 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;

(B) Destroy all "customers and vendors" compilations and any computer program for such compilation, withdraw from all personnel with sales responsibilities any lists or compilations respecting defendant's purchases and withdraw from all personnel with purchasing responsibilities any lists or compilations respecting defendant's sales, provided that defendant may retain one copy of each "customers and vendors" report for the year 1970 and earlier years in the custody of defendant's general counsel, solely for use in determining defendant's tax liabilities, in determining defendant's legal rights and liabilities, and in legal proceedings;

(C) Refrain from belonging to and prohibit its 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) Make all purchasing decisions upon considerations of price, quality, service, financial responsibility, and the establishment and maintenance of adequate and reliable sources of supply; and the defendant shall not consider its sales to any supplier as a factor in any purchasing decision, even if in any instance under the above considerations two or more suppliers are equal;

(E) Defendant shall take all necessary and appropriate actions to inform its present and future officers and its present and future employees having managerial, purchasing or sales responsibilities or responsibility for data processing, data collecting or analyzing of purchase or sales information of the provisions of this Final Judgment, and to enforce compliance therewith, throughout the term of this Final Judgment. Likewise, defendant shall furnish throughout the term of this Final Judgment a copy of this Final Judgment to each said present and future officer and to each said present and future employee having managerial, purchasing or sales responsibilities, or responsibility for data processing, data collecting or analyzing of purchase or sales information, together with a written notice, signed by its chief executive officer, in a form satisfactory to plaintiff.

(F) Furnish, within sixty (60) days after the entry hereof, a copy of this Final Judgment to each customer to whom it has sold more than \$50,000 of products, goods or services during any of its fiscal years 1969 through 1971. It shall also furnish a copy of this Final Judgment to each supplier from whom it has purchased more than \$50,000 of products, goods or services during any such year. The copy of this Final Judgment shall be accompanied with a written notice satisfactory to the plaintiff; and

(G) 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.

VII

Defendant is ordered and directed:

(A) To prohibit all its employees with purchasing responsibility from seeking information as to whether a supplier is a customer and from discussing with any supplier the defendant's sales to any customer;

(B) To prohibit all its officers and employees from influencing, requesting or suggesting to any officer or employee with purchasing responsibilities to consider sales to any other firm as a factor in any purchasing decision;

(C) To prohibit all its officers and employees having sales responsibilities from seeking information as to whether any customer is a supplier;

(D) To prohibit all its employees with responsibility for data processing, data collecting, or analysis of purchase or sales information from communicating sales information to purchasing personnel or purchase information to sales personnel.

VIII

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose and subject to any legally recognized privilege;

(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, be permitted:

(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

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.

X

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

Dated: May 17 , 1972

/s/ JOSEPH P. WILLSON
United States District Court