IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. LYKES BROS. STEAMSHIP CO., INC., Defendant.	Civil Action No.: 1:95CV01839 Filed: September 26, 1995

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief against the defendant named herein, and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This Complaint is filed by the United States under Section 4 of the Sherman Act, 15 U.S.C. § 4, as amended, to prevent and restrain a continuing violation by the defendant of Section 1 of the Sherman Act, 15 U.S.C. § 1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1337.

2. The defendant maintains an office, transacts business, and is found within the District of Columbia, within the meaning of 15 U.S.C. § 22.

II.

DEFENDANT

3. Lykes Brothers Steamship Co., Inc. ("Lykes"), is a Louisiana corporation with its principal place of business in Tampa, Florida. The defendant is an ocean common carrier that provides international ocean transportation services for cargo between the United States and foreign destinations, including the North Atlantic.

4. Whenever this Complaint refers to any corporation's act, deed, or transaction, it means that such corporation engaged in the act, deed, or transaction by or through its members, officers, directors, agents, employees, or other representatives while they actively were engaged in the management, direction, control, or transaction of its business or affairs.

III.

CONCERTED ACTION

5. Universal Shippers Association ("Universal") is an association of various firms engaged in the business of importing wines and spirits into the United States. Universal and its member firms have participated with the defendant in the violation alleged in this Complaint, and have performed acts and made statements in furtherance thereof.

IV.

TRADE AND COMMERCE

6. At material times, the defendant has engaged in the business of providing ocean transportation services to its customers, who are called "shippers," in

50 states and the District of Columbia. A shipper may obtain ocean transportation at the prices set forth in Lykes' tariffs, which are publicly filed at the Federal Maritime Commission ("FMC"), or may enter into a "service contract," which, among other things, sets forth the prices for particular transportation services. Under service contracts, an ocean common carrier such as Lykes commits to a certain price for transporting cargo in exchange for the shipper's commitment to provide a certain minimum quantity of cargo over a fixed period of time.

7. Prices in the ocean shipping industry are not set in a vigorously competitive market. Otherwise competing ocean common carriers are eligible, pursuant to the Shipping Act of 1984 (46 U.S.C. App. § 1701, *et seq.),* to seek and receive immunity from the antitrust laws to form "conferences." Conferences are cartels that agree on the prices their members will charge and engage in other concerted activity. There are over 15 ocean carriers that serve the North Atlantic trade between the United States and Europe, but a majority of these are members of the Trans-Atlantic Conference Agreement ("TACA"), a conference that has received antitrust immunity to jointly fix prices and limit capacity.

8. Lykes is an "independent" carrier in the North Atlantic trade; that is, it is one of the ocean carriers that does not belong to TACA or engage in conference activities in that trade. In trades with a significant conference, such as the North Atlantic trade, independents as well as the conference possess some degree of market power over freight rates because there are relatively few separate sellers.

9. A shippers' association is a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure volume discounts, such as volume tariff rates or service contracts. Universal is a shippers' association that enters into contracts with Lykes and other ocean carriers for the ocean transportation services of wine and spirits from Europe to the United States. Over 15 thousand containerloads of wines and spirits are imported into the United States annually from the North Atlantic, the transportation of which is valued over $40,000,000. Universal is the largest wine and spirits shippers' association in this trade, accounting for approximately half of the wine and spirits cargo.

10. At material times, Service Contract No. 436-B between the defendant and Universal has contained an "automatic rate differential clause" as follows:

> Carrier guarantees that rates and charges in this Contract shall at all times be at least 5% lower than any other tariff, Time Volume or other service contract rates for similar commodities at a lesser volume and essentially similar transportation service. As necessary, Carrier shall reduce rates/charges in this Contract as necessary to honor this guarantee, promptly informing the Association and the FMC.

11. Other shippers or shippers' associations compete with Universal and its members for importing wines and spirits into the United States for sale to U.S. customers. Universal's competitors seek to minimize their costs by obtaining the lowest possible rates for transportation services for wine and spirits in the North Atlantic trade. The automatic rate differential clause requires Lykes to charge these competing shippers at least 5% more for any lesser volume than it charges Universal

and assures Universal that Lykes will have limited incentives to offer Universal's competitors transportation rates as favorable as Lykes could otherwise offer. Because Lykes is one of relatively few separate sellers of ocean transportation, whether conference or independent, in the North Atlantic trade, Universal's competitors may face higher freight rates if Lykes is unreasonably constrained in its ability to bid for their cargo. The automatic rate differential clause requires Lykes to maintain a rate differential in favor of Universal at all times, regardless of changes in Lykes' costs of providing ocean transportation, which places shippers who compete with Universal at a competitive disadvantage.

12. The activities of the defendant that are the subject of this Complaint have been within the flow of, and have substantially affected, interstate and foreign trade and commerce.

V.

VIOLATION ALLEGED

13. On or about October 26, 1993, the defendant entered into an agreement with Universal Shippers Association in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. This offense is likely to recur unless the relief hereinafter sought is granted.

14. For the purpose of forming and effectuating this agreement, the defendant did the following things, among others:

(a) agreed to Service Contract 436-B with Universal, including the automatic rate differential clause contained therein; and

(b) abided by the automatic rate differential clause contained in Service Contract 436-B.

15. The agreement has had the following effects, among others:

(a) limiting competition in the transportation of wine and spirits from Northern Europe to the United States; and

(b) raising barriers to effective competition with Universal from other shippers or shippers' associations that ship wine and spirits from Northern Europe to various points and ports in the United States.

VI.

PRAYER

WHEREFORE, the plaintiff prays:

1. That the Court adjudge and decree that the defendant entered into an unlawful agreement in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

2. That the defendant, its officers, directors, agents, employees, and successors and all other persons acting or claiming to act on its behalf be enjoined, restrained, and prohibited for a period of ten years from, in any manner, directly or indirectly, continuing, maintaining, or renewing this agreement, or from engaging in any other combination, conspiracy, agreement, understanding, plan, program, or other arrangement having the same effect as the alleged violation.

3. That the United States have such other relief as the nature of the case may require and the Court may deem just and proper.

DATED:

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