

File

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA )  
 )  
 Plaintiff )  
 )  
 v. )  
 )  
 MACK TRUCKS, INC. and NATIONAL )  
 DISTRIBUTOR ADVISORY COUNCIL )  
 )  
 Defendants. )

Civil No. 81-0102  
Filed: January 12, 1981

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action against the defendants named herein and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. §4), commonly known as the Sherman Act, in order to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 1 of the said Act, as amended (15 U.S.C. §1).

2. Mack Trucks, Inc. is located in, transacts business, and is found within the Eastern District of Pennsylvania.

## II

### DEFENDANTS

3. Mack Trucks, Inc. (hereinafter referred to as Mack) is made a defendant herein. Mack is incorporated and exists under the laws of the Commonwealth of Pennsylvania and has its principal place of business in Allentown, Pennsylvania. During all of the period of time covered by this complaint, Mack engaged in the manufacture and sale of trucks and parts for trucks throughout the United States.

4. The National Distributor Advisory Council (hereinafter referred to as NDAC) is made a defendant herein. NDAC is an unincorporated association with its headquarters in Rochester, New York. NDAC is composed of delegates selected by and from District Councils of independently-owned domestic distributors appointed by Mack to sell and service new trucks manufactured and/or sold by Mack and to sell parts for such trucks.

## III

### DEFINITION

5. AS used herein, "NDAC members" means members of District Councils of Mack distributors and delegates selected by and from District Councils to serve on NDAC.

## IV.

### CO-CONSPIRATORS

6. Various individuals, partnerships and corporations not made defendants in this complaint participated as co-conspirators with the defendants in the violation alleged herein and have performed acts and made statements in furtherance thereof.

TRADE AND COMMERCE

7. Mack sells parts for trucks throughout the United States. These parts are manufactured by Mack and others. Mack sells such parts to truck owners and operators through its own branches and part stores. Mack also sells parts for trucks throughout the United States to more than 200 independently-owned distributors who are NDAC members and they in turn resell such parts to truck owners and operators. Mack and NDAC members also sell to more than 500 independently-owned service dealers, who in turn resell such parts to truck owners and operators. In many regions of the country Mack branches and part stores, NDAC members and service dealers sell parts to truck owners and operators in competition with each other.

8. Representatives of Mack and NDAC regularly meet and discuss, among other things, discounts to be used by Mack branches and NDAC members in the pricing of truck parts sold to service dealers and other purchasers of truck parts. Mack then publishes new parts price lists and schedules of discounts and distributes them to its branches and NDAC members.

9. In 1979, total sales of parts for trucks to truck owners and operators by Mack, NDAC members, and service dealers exceeded \$300 million dollars. During the period of time covered by this complaint, such parts were sold and shipped in substantial quantities in a continuous and uninterrupted flow of interstate commerce across state lines. The activities of

defendants and co-conspirators in carrying out the violation alleged were within the flow of interstate commerce and had a substantial effect on interstate commerce.

## VI

### VIOLATION ALLEGED

10. Beginning at least as early as 1978, the exact date being unknown to the plaintiff, and continuing thereafter until the date of the filing of this complaint, the defendants and co-conspirators have engaged in a continuing combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act. This combination and conspiracy will continue unless the relief hereinafter prayed for is granted.

11. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators, the substantial terms of which were to raise, fix, maintain and stabilize prices charged truck owners and operators and service dealers for truck parts.

12. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators did those things which they combined and conspired to do, including, among other things, agreeing on discounts to be used by Mack branches and NDAC members in the pricing of truck parts sold to service dealers and other purchasers of truck parts.



VII

EFFECTS

13. The aforesaid combination and conspiracy had the following effects, among others:

- (a) Prices charged truck owners and operators and service dealers for truck parts have been raised, fixed, maintained and stabilized at artificial and non-competitive levels;
- (b) Purchasers of truck parts have been deprived of the benefits of free and open competition in the purchase of such parts; and
- (c) Competition between Mack and NDAC members in the sale of parts for trucks has been restrained.

PRAYER

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that the defendants and co-conspirators have engaged in an unlawful combination and conspiracy in restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act.

2. That the defendants, their officers, members, directors, agents and employees and all other persons acting or claiming to act on their behalf, be enjoined and restrained from in any manner directly or indirectly, continuing, maintaining, or renewing the combination and conspiracy hereinabove alleged or from engaging in any other combination,

conspiracy, contract, agreement, understanding or concert or action having a similar purpose or effect and from adopting or following any practice, plan, program, or device having a similar purpose or effect.

3. That defendants and their officers, members, directors, agents and employees and all other persons acting or claiming to act on their behalf, be enjoined and restrained from, in any manner, directly or indirectly, supplying distributors and service dealers, with actual or suggested resale prices, or actual or suggested discounts or schedules of discounts for the resale of truck parts and that the defendants be enjoined from supplying, or exchanging any information with distributors or service dealers with respect to resale prices or discounts for the resale of truck parts.

4. That NDAC, and its officers, members, directors, agents and employees and all other persons acting or claiming to act on its behalf be enjoined and restrained from, in any manner, directly or indirectly, requesting or inducing Mack to supply actual or suggested resale prices or actual or suggested discounts or schedules of discounts for the resale of truck parts.

5. That the defendants be required to send a copy of the Final Judgment entered in this case to all distributors of Mack trucks, all Mack service dealers, and all Mack branches and part stores, and for a period of years to all new distributors, service dealers, branches and part stores.

6. That plaintiff have such other relief the Court may deem just and proper.

7. That the plaintiff recover the costs of this suit.

  
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