

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Iowa Beef Processors, Inc., U.S. District Court, N.D. Iowa, 1974-1 Trade Cases ¶75,014, (Feb. 27, 1974)

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United States v. Iowa Beef Processors, Inc.

1974-1 Trade Cases ¶75,014. U.S. District Court, N.D. Iowa, Western Division. Civil No. 69-C-3008-W. Filed February 27, 1974. Case No. 2043, Antitrust Division, Department of Justice.

Clayton Act

Acquisitions and Mergers—Divestiture—Beef Packers—Modification of Decree—Changed Conditions—Appointment of Trustee.—Iowa beef processors' motion to vacate the divestiture provisions of a consent decree on the grounds that conditions had so changed in the cattle slaughter industry, especially as it related to location of cattle feeding and cattle slaughter operations, that divestiture was no longer an appropriate remedy to effectuate the purpose of the decree was denied, since there was no evidence that an acknowledged trend in the shift of cattle feeding operations to the southern plains started only after 1970 when the decree was entered. A trustee was appointed for purposes of divestiture, pursuant to the court's conclusion that the appointment was appropriate and necessary as asserted by the government in its Petition for Appointment of Trustee.

Memorandum and Order

HANSON, D. J.: On February 4, 1969 the United States filed this cause of action challenging the acquisition by Iowa Beef Processors, Inc. of Blue Ribbon Beef Pack, Inc., which operated plants at Le Mars and Mason City, Iowa. On August 1, 1969 with the Court's permission, the acquisition was consummated, with certain conditions attached to assure that the Blue Ribbon assets could be divested as a going business.

The consent decree entered on March 20, 1970 required Iowa Beef Processors, Inc., to divest to an "eligible purchaser" the two plants as a whole or separately within two years. "Eligible purchaser" is defined as "an operating business in competition with other firms engaged in the slaughter or processing of feed cattle" and who is approved by the Government or the Court.

On July 17, 1972, the Court extended the time for the sale of the two plants by one year upon application of Iowa Beef. At the hearing upon this request, the Court received extensive testimony as to the unsuccessful attempts of Iowa Beef to sell these plants and the failure to comply with the consent decree. It was upon this basis and the representations of Iowa Beef as to efforts that would be made to divest the plants if an extension were granted, that the Court entered its July 17, 1972 order.

This time extension has passed and Iowa Beef has still been unable to divest these plants under the original consent decree.

Iowa Beef now presents to the Court a Motion to Vacate Divestiture Provisions of Consent Decree. The thrust of this motion is that conditions have so changed in the cattle slaughter industry, especially as it relates to location of cattle feeding and cattle slaughter operations that divestiture is no longer an appropriate remedy to effectuate the purpose of the consent decree.

The Government has not accepted Iowa Beef's contention as it relates to modifying the consent order and the Government asserts that divestiture is still appropriate under the original consent decree.

The Government has reurged its request, originally presented to the Court immediately following the first two year period for sale of assets, that a trustee be appointed to dispose of the former Blue Ribbon plants.

This Court allowed Iowa Beef Processors, Inc., an opportunity to pursue discovery and to present evidence relating to their claim that divestiture is no longer an appropriate remedy in this instance. On October 23, 1973, this Court received evidence relating to the motion to vacate consent order.

At this hearing Iowa Beef introduced substantial evidence relating to the relative stagnation of the feed cattle business in the Midwest versus the Southern Plains region, where the industry is expanding rapidly. This evidence indicates that the number of cattle fed in the Midwest has stabilized while cattle feeding in the Southern Plains region has been expanding.

Iowa Beef contends that the stabilization or decrease in the cattle feeding industry in this area has produced substantial overcapacity of slaughter facilities which has increased competition for available cattle supplies and has created a "sellers" market for cattle feeders and substantial premium prices in this area versus the Southern Plains.

Iowa Beef argues that the addition of more bidders in face of declining cattle supplies will only drive more competitors out of business and leave the situation unchanged as it relates to competition for feed cattle.

Iowa Beef argues that this market situation is the reason that they have been unable to find any bidders for these two plants at any price.

While Iowa Beef has presented convincing testimony to this Court as it relates to the shift in cattle feeding operations to the Southern Plains as a result of competitive advantages, there is no convincing evidence that this trend started only after 1970 when the consent order was entered.

The Court strongly suspected that this phenomenon has been known for some time and this suspicion is confirmed in this record.

In considering the questions presented to this Court, the dictates of the *U. S. Supreme Court in United States v. Swift & Co.* [[1932-1939 TRADE CASES ¶ 55,005](#)], 286 U. S. 106,119 (1932) must be considered:

"There is need to keep in mind steadily the limits of inquiry proper in the case before us. We are not framing a decree. We are asking ourselves whether anything has happened that will justify us now in changing a decree. The injunction, whether right or wrong, is not subject to impeachment in its application to the conditions that existed at its making. We are not at liberty to reverse under the guise of readjusting. Life is never static, and the passing of a decade has brought changes to the grocery business as it has to every other. The inquiry for us is whether the changes are so important that dangers, once substantial, have become attenuated to a shadow. No doubt the defendants will be better off if the injunction is relaxed, but they are not suffering hardship so extreme and unexpected as to justify us in saying that they are the victims of oppression. *Nothing less than a clear showing of grievous wrong evoked by new and unforeseen conditions should lead us to change what was decreed after years of litigation with the consent of all concerned.*" (Emphasis added)

The question this Court must address is whether a "grievous wrong evoked by new and unforeseen conditions" would result from strict enforcement of the consent decree.

Iowa Beef has demonstrated changing conditions emerging in the cattle feeding and cattle slaughtering industry as a result of the emergence of the Southern Plains as a major factor in this industry. Iowa Beef has demonstrated difficulty in acquiring reasonable bids for the Le Mars and Mason City plants or any bids. Iowa Beef has raised questions to this Court as to whether these plants can be sold and operated as viable economic entities by other firms, given the market conditions in the industry. The fact that few or no reasonable offers were received by Iowa Beef reinforces these arguments. Iowa Beef, however, has not met their burden at this time as it relates to overturning the consent decree.

This Court believes it still may be possible to achieve the goals of the consent order and that the Court should explore the possibility of doing so by the appointment of a trustee with limited powers to dispose of the Iowa Beef plants at Le Mars and Mason City.

In the event that the trustee is unable to obtain a buyer at a reasonable price, this will be an indication to this Court that market conditions are such that the plants cannot be purchased and operated by a purchaser other than Iowa Beef as viable economic entities and that to divest the plants would not achieve the objectives of the consent decree.

This Court believes that a divestiture of these plants to a purchaser who could not operate them as viable entities would not further the objectives of this cause of action and that the Government could not insist in good faith that carrying out this consent order in such a manner that liquidation of the plants resulted would accomplish any antitrust objectives. If, however, a trustee who is not under the control of Iowa Beef can find a purchaser who can operate the plants as viable economic entities, this should be done.

The Court, having found that the defendant has not complied with prior orders of this Court requiring the defendant to divest the assets of Blue Ribbon Pack by March 20, 1973, concludes that the appointment of a trustee to sell these assets is appropriate and necessary in accordance with the Petition for Appointment of Trustee submitted by plaintiff,

Accordingly, It Is Hereby Ordered that:

- (1) David J. Neubauer is appointed trustee at a reasonable compensation to be fixed by the Court and paid by defendant Iowa Beef Processors, Inc. (IBP). IBP will transfer to the trustee, within one week of his appointment, all rights and powers necessary to permit him to divest the Blue Ribbon assets in accordance with the provisions of this Order. Pending such divestiture, IBP shall continue to remain responsible for the operations of these assets in accordance with the provisions of the Final Judgment of March 20, 1970.
- (2) The trustee shall sell, as quickly as possible, the former Blue Ribbon beef slaughtering plants located at Mason City and Le Mars, Iowa to an "eligible purchaser" or "eligible purchasers" as defined in the original decree who will undertake in good faith to continue the slaughtering operations of the plants as a going business or businesses. IBP shall be entitled to the net proceeds of such sale or sales.
- (3) As soon as the terms of sale have been agreed upon and at least thirty days before consummating the proposed sale, the trustee shall so advise the Court, with notice to plaintiff, identifying the purchaser or purchasers and setting forth in appropriate detail the price, terms and conditions of the proposed sale. Within thirty days of said notice to plaintiff, plaintiff may file with the Court and serve upon the trustee a statement of its objections to the proposed sale, and in such event the proposed sale shall not be consummated unless approved by the Court.
- (4) The trustee shall have full authority to retain such consultants, attorneys or other representatives as are reasonably necessary to assist him in the disposition of the plants. IBP shall be notified of proposed expenditures in excess of \$500, and shall have an opportunity to present objections to this Court if they desire. Delays caused by said objections shall extend the trustee's time in which to dispose of said plants.
- (5) The trustee shall also be entitled to reimbursement from IBP for reasonable expenses incurred by him as trustee in carrying out his duties, subject to the right of IBP to be heard by this Court on the allowance and the amount of such expenses.
- (6) The trustee shall submit a report to this Court every ninety (90) days on the progress he has made in disposing of the plants. The trustee may at any time submit such additional reports to the Court as he may consider warranted. A copy of each report he submits to the Court shall be furnished plaintiff and defendant.
- (7) For the purpose of carrying out his duties under this Order the trustee, upon reasonable notice, shall be entitled to access to those records and documents in the possession or under the control of IBP which relate to the Blue Ribbon plants, or to the functions and duties of the trustee; to interview officers or employees of IBP regarding such matters; and to secure from IBP reasonable reports regarding such matters.
- (8) If either or both plants remain unsold one year from, the date of his appointment, then the trustee's authority under this Order terminates; provided, however, such period may be extended by the Court for an additional period of time on the representation by the trustee that he is currently engaged in negotiations which may effect the divestiture required by this Order. Any delays in the divestiture of these plants caused by IBP shall extend the time for divestiture in accordance with the delay caused.
- (9) If the trustee is unable to sell either or both plants, then IBP is relieved from the divestiture provisions of the Final Judgment.

(10) Any party may apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, modification, or termination of any of the provisions of this Order, for the enforcement of compliance therewith, and for the punishment of violations thereof.

(11) Except as provided for in this Order, the terms of the Final Judgment remain in full force and effect.

IBP has raised certain objections to the appointment of David J. Neubauer as trustee for the sale of these plants. The Court has reviewed these objections and the affidavit submitted to the Court relating to this patent matter by the trustee himself.

The Court finds that this trustee appears to be well-qualified to accomplish the goals outlined in this Order and that the patent dispute is not of such nature as to prevent the trustee from performing his duties.

It is expected that the trustee and IBP will keep the Court informed of any developments that would prevent the trustee from carrying out his duties as trustee under this Order.

It Is Further Ordered that the Court reserves jurisdiction of this facet of the action as it relates to any further orders that may be necessitated to finally dispose of this matter. Neither party has raised the issue of a requirement of bond for the trustee appointed by this Order. If the parties feel that it is necessary to have a bond set, such application should be made to the Court and the Court will consider the matter.