

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Inter-Island Steam Navigation Co., Ltd., et al., U.S. District Court, D. Hawaii, 1950-1951 Trade Cases ¶62,766, (Jan. 11, 1951)

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United States v. Inter-Island Steam Navigation Co., Ltd., et al.

1950-1951 Trade Cases ¶62,766. U.S. District Court, D. Hawaii. Civil No. 887. Filed January 11, 1951.

Sherman Antitrust Act

Consent Decree—Steamship and Airline Competition—Allocation of Territories and Services.—After reorganization of a steamship company is planned which would place various combined operations individually into the hands of new and separate corporations and remove stock ownership in competitors, a decree is consented to which prohibits agreements not to compete in similar tourist transportation or otherwise to suppress competition by the allocation of territories and services among competitors, and prohibits arrangements for exclusive dealing with any shipper. It is provided that if two certain competitors in the future become connected by any common stock ownership, then either one operating an airline shall be prohibited from engaging in water carriage until authority is granted by the proper governmental agency.

For the plaintiff: Wm. Amory Underhill, Acting Assistant Attorney General; Sigmund Timberg, James E. Kilday, and Robert W. Strange, Special Assistants to the Attorney General; Howard K. Hoddick, United States Attorney; Edwin H. Pewett and Stanley D. Rose, Attorneys.

For the defendants: J. Garner Anthony (Robertson, Castle & Anthony, of counsel), Honolulu, Hawaii, for Inter-Island Steam Navigation Co., Ltd., Hawaiian Airlines, Ltd., Inter-Island Resorts, Ltd., and Overseas Terminal, Ltd.

For earlier opinion in same case, see ¶ 62,593.

Final Judgment

[*In full text*]

Plaintiff, United States of America, having filed its complaint herein on December 17, 1948, and defendant Inter-Island Steam Navigation Company, Limited, and defendant Hawaiian Airlines, Limited, having appeared and filed their answers to such complaint denying the substantive allegations thereof; and plaintiff's motions for preliminary injunction and summary judgment having been denied by the Court; and the Court having ruled in its decision thereon that it had jurisdiction over this cause; and defendant, Inter-Island Steam Navigation Company, Limited, having ceased its business and operations as a common carrier by water on March 31, 1950, and having adopted a plan of reorganization on July 17, 1950 whereby two new corporations Overseas Terminal, Ltd., and Inter-Island Resorts, Ltd., succeed to certain of its assets and, further pursuant to this plan, defendant Inter-Island Steam Navigation Company, Limited, will dispose of all of the shares in defendant Hawaiian Airlines, Limited, held by it and will then be dissolved and disincorporated; and a supplemental complaint having been filed on January 11, 1951, naming as defendants in this case Overseas Terminal, Ltd., and Inter-Island Resorts, Ltd., and the undersigned defendants having appeared and filed their answers to such supplemental complaint;

NOW, THEREFORE, before any testimony has been taken herein and without trial or adjudication of any issue of fact or law herein and upon consent of all the signatory parties hereto, and without admission that defendants or any of them have violated or are now violating any statute,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

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[*Jurisdiction*]

This Court has jurisdiction of the subject matter herein and of all parties hereto, and the complaint and supplemental complaint herein state a cause of action against the defendants under Sections 1, 2 and 3 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies", as amended:

II

[*Definitions*]

As used in this judgment:

(a) "Inter-Island" means defendant Inter-Island Steam Navigation Company, Limited, a Hawaiian Corporation existing under the laws of the Territory of Hawaii and having its principal office and place of business in Honolulu, T. H. and shall be understood to include defendant Overseas Terminal, Ltd., and defendant Inter-Island Resorts, Ltd.

(b) "Hawaiian" means defendant Hawaiian Airlines, Limited, a Hawaiian corporation and a common carrier by air existing under the laws of the Territory of Hawaii and having its principal office and place of business in Honolulu, T. H.

III

[*Application to Successors*]

The provisions of this Judgment shall apply to the defendants, their respective officers, directors, agents, employees, successors and assigns and all other persons acting under, through or for such defendant.

IV

[*Limitation on Types of Business*]

If at any time defendant Inter-Island should own any of the stock of defendant Hawaiian or defendant Hawaiian should own any of the stock of defendant Inter-Island, or if both defendant Inter-Island and defendant Hawaiian should be owned or controlled by the same individual or corporation, and either of such defendants should then be operating an airline, neither of such defendants shall engage in the business of a common carrier by water between ports of the Territory of Hawaii except pursuant to an order of the Civil Aeronautics Board or other appropriate agency of the Federal Government having jurisdiction and authority to issue such order permitting the same. In the event that the Civil Aeronautics Board or such other agency, upon application pursuant to this Judgment, should disclaim jurisdiction, neither of such defendants shall engage in the business of a common carrier by water until after the Attorney General shall have received in Washington, D. C. sixty days' written notice thereof.

V

[*Agreements Prohibited*]

Defendants Inter-Island and Hawaiian are hereby enjoined and restrained from entering into, performing, adopting, adhering to, maintaining or furthering, directly or indirectly, any combination, contract, agreement, or arrangement between themselves or with any tourist or travel agency to arrange for and conduct tours by common carriers, solely or in part on land, sea, and in the air on condition that the other or such tourist or travel agency be prohibited from arranging similar tours with, or furnishing tickets or other transportation services for, common carriers other than one or both of the defendants.

VI

[*Rate Agreements Prohibited*]

If defendant Inter-Island should hereafter enter into the business of a common carrier, defendant Inter-Island and defendant Hawaiian are hereby enjoined and restrained from entering into any agreement, understanding, or arrangement, establishing any rate for the purpose of eliminating or suppressing competition.

VII

[*Discrimination Prohibited*]

Defendant Hawaiian is hereby enjoined and restrained from:

(a) entering into or carrying out any agreement or understanding with any tourist or travel agency not owned by it on condition that such agency will not sell or handle the tickets of, or not furnish services comparable to those furnished by it to defendant Hawaiian, to any other air carrier lawfully operating to, from or between points in the Territory of Hawaii and

(b) refusing to deal with, or discriminating against, any tourist or travel agency because such agency sells the tickets of, or renders other services to, any other air carrier lawfully operating to, from or between points in the Territory of Hawaii.

If defendant Inter-Island should hereafter enter into the business of a common carrier, defendant Inter-Island and defendant Hawaiian are hereby enjoined and restrained from entering into any agreement, understanding, or arrangement with any shipper whereby such shipper agrees to refrain from using the shipping facilities of any common carrier.

[*No Paragraph VIII in Decree*]

IX

[*Rights Under Other Laws*]

Nothing in this Judgment shall be construed to prevent defendants from doing anything authorized to be done by Sections 408, 409 and 412 of the Civil Aeronautics Act of 1938, or by Section 15 of the Shipping Act of 1916, as amended, or shall deprive defendants of the immunities conferred by said acts as now in force or as hereafter amended.

X

[*Inspection and Compliance*]

For the purpose of securing compliance with this Judgment and for no other purpose, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or an Assistant Attorney General, and on reasonable notice to any defendant, made to its principal office, be permitted, subject to any legally recognized privilege, (1) access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant relating to any matters contained in this judgment, and (2) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of said defendant, who may have counsel present, regarding any such matters and upon request said defendant shall submit such written reports to the Department of Justice with respect to matters contained in this Judgment, as may from time to time be reasonably necessary to the enforcement of this Judgment. No information obtained by the means provided in this section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Judgment or as otherwise required by law.

XI

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling any of the parties to this 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 Judgment, or for the modification or termination of any of the provisions thereof, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.