

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Lexington Tobacco Board of Trade., U.S. District Court, E.D. Kentucky, 1958 Trade Cases ¶69,131, (Sept. 3, 1958)

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United States v. Lexington Tobacco Board of Trade.

1958 Trade Cases ¶69,131. U.S. District Court, E.D. Kentucky. Civil Action No. 1310. Filed September 3, 1958. Case No. 1412 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Fixing Prices for Services.—

A tobacco board of trade comprised of tobacco buyers and warehouse operators was prohibited by a consent decree from entering into any agreement (1) to fix warehouse fees and commissions, the price charged by tobacco warehouses for services or facilities furnished in connection with the sale of tobacco at auction, (2) to request any person to adhere to any warehouse fees and commissions, or (3) to suggest to any warehouseman the fees and commissions to be charged for such services or facilities. Also, the tobacco board of trade was enjoined from directly or indirectly suggesting any formula for arriving at such fees and commissions.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing —Information

Exchange and Price Lists.—A tobacco board of trade comprised of tobacco buyers and warehouse operators was prohibited by a consent decree from circulating or using, in any manner, any schedule or price list containing any warehouse fees and commissions to be charged by tobacco warehousemen in connection with the sale of tobacco at auction.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing —Investigations and Penalties.—

A tobacco board of trade comprised of tobacco buyers and warehouse operators was enjoined by a consent decree from directly or indirectly (1) policing or otherwise interfering with the warehouse fees and commissions charged by any person, (2) exacting any fines or other punitive damages from any of its members, based in whole or in part on the warehouse fees and commissions charged by such member, and (3) taking any punitive action against any person which was based in whole or in part on the warehouse fees and commissions charged by such person.

Department of Justice Enforcement and Procedure—Consent Decree—Specific Relief —Amendment of Bylaws.—

A tobacco board of trade comprised of tobacco buyers and warehouse operators was directed by a consent decree to (1) cancel any rule, regulation, or bylaw which was inconsistent with any provision of the decree, and (2) to include in its bylaws a provision requiring the expulsion of any member who engaged in any activity inconsistent with the decree or who violated any bylaw of the board of trade which was designed to obtain compliance with the consent decree. The tobacco board of trade was also prohibited from adopting or enforcing any rule or bylaw which was contrary to any provision of the decree.

For the plaintiff: Victor R. Hansen, Assistant Attorney General; and Harry N. Burgess, Henry M. Stuckey, Charles F. B. McAleer, and William F. Costigan, Attorneys, Department of Justice.

For the defendant: Rufus Lisle for the Lexington Board of Trade.

Final Judgment

[*Consent Decree*]

H. CHURCH FORD, District Judge [*In full text*]: The plaintiff, United States of America, having filed its complaint herein on September 3, 1958 and the Lexington Tobacco Board of Trade having appeared herein and the plaintiff and the defendant, by their respective attorneys, having severally 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's constituting evidence or admission by any party in respect of any such issue;

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Now, Therefore, before any testimony or evidence has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon the consent of all the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter hereof and of all the parties hereto. The complaint states a claim upon which relief may be granted against the defendant under Section 1 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

[*Definitions*]

As used in this Final Judgment:

- (A) "Person" shall mean any individual, partnership, corporation, association, firm or other legal entity;
- (B) "Defendant Board" shall mean the defendant Lexington Tobacco Board of Trade, a Kentucky corporation;
- (C) "Warehouse fees and commissions" shall mean the amount or price charged by tobacco warehouses for services or facilities furnished in connection with the sale of tobacco at auction.

III

[*Applicability*]

The provisions of this Final Judgment applicable to Defendant Board shall apply to such defendant and to its members, officers, agents, servants, employees, subsidiaries, successors and assigns, and to all persons in active concert or participation with said defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

[*Specific Relief*]

(A) The Defendant Board is ordered and directed:

- (1) To terminate and cancel any rule, article, regulation or by-law which is contrary to or inconsistent with any provision of this Final Judgment;
 - (2) To include in its by-laws a provision requiring the expulsion of any member who engages in any activity contrary to or inconsistent with any provision of the Final Judgment or who violates any rule, article, regulation or by-law of Defendant Board designed to obtain compliance with this Final Judgment.
- (B) The Defendant Board is enjoined and restrained from adopting, entering into, adhering to or enforcing any by-law, rule, regulation, or article which is contrary to or inconsistent with any provision of this Final Judgment.

V

[*Price Fixing Agreements Prohibited*]

The Defendant Board is enjoined and restrained from entering into, adhering to, maintaining, or enforcing with any tobacco warehouseman or central agency for such warehousemen any contract, agreement, understanding, plan or program, to directly or indirectly:

- (A) Fix, establish, maintain or adhere to warehouse fees and commissions;

(B) Request, urge, compel, or attempt to request, urge or compel any person to adhere to or maintain any warehouse fees and commissions;

(C) Urge, influence or suggest, or attempt to urge, influence or suggest, to any tobacco warehousemen warehouse fees and commissions to be charged.

VI

[*Price Lists—Policing Prices*]

Defendant Board is enjoined and restrained from directly or indirectly:

(A) Suggesting or recommending any warehouse fees and commissions or formula for arriving at such fees and commissions;

(B) Circulating, exchanging or using, in any manner, any schedule or price list containing any warehouse fees and commissions;

(C) Policing or otherwise interfering with warehouse fees and commissions charged by any person;

(D) Exacting or attempting to exact any fines or other punitive damages from any of its members, based in whole or in part on the warehouse fees and commissions charged by such member;

(E) Taking any punitive action whatsoever against any person which action is based in whole or in part on the warehouse fees and commissions charged by such person.

VII

[*Notice*]

Within forty-five (45) days from the date of entry hereof, Defendant Board is ordered and directed to:

(A) Furnish to each of its members a true copy of this Final Judgment;

(B) File with the Clerk of this Court, with a copy to the Attorney General, an affidavit listing the names and addresses of the persons to whom copies of the Judgment were furnished and the manner of service under Section (A) hereof.

VIII

[*Inspection and Compliance*]

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

IX

[*Jurisdiction Retained*]

Jurisdiction is retained by this Court for the purpose of enabling either of the parties to this Final Judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction and carrying out of this Final Judgment, for the modification or termination of any of the provisions thereof, for the enforcement of compliance therewith and punishment of violations thereof.