

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Charg-It of Baltimore, Inc., U.S. District Court, D. Maryland, 1960 Trade Cases ¶69,870, (Dec. 14, 1960)

United States v. Charg-It of Baltimore, Inc.

1960 Trade Cases ¶69,870. U.S. District Court, D. Maryland. Civil No. 12330. Dated December 14, 1960. Case No. 1555 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Exclusive Dealing—Competitive Central Credit Service Plan—Agreements.—A central credit service plan was ordered to delete from all central credit service plan agreements any provision that its plan shall be exclusive in nature or that the terms and conditions of the agreement will be affected in the event that a member merchant contracts with a competing central credit service plan.

Exclusive Dealing—Cancellation for Non-Compliance—Participation in Competitive Plans.—A central credit service plan was prohibited from canceling or terminating the membership of any merchants because of the extent to which he deals with any competitor, requiring any member merchant to disclose the extent of dealing with competitors, conditioning participation in any plan upon the member selling any specified dollar amount of accounts receivable to it, or refusing to do business with any member merchant who otherwise qualifies. However, the defendant was permitted to terminate agreements where dollar amount of receivables has been so small as to be unprofitable and to refuse to enter into any agreement where the reasonably anticipated dollar amount of receivables to be sold to the defendant would be unprofitable.

Exclusion from Market—Central Credit Service Plan—Coercive Tactics.—A central credit service plan was prohibited from hindering, limiting, or preventing, either directly or by agreement, any person from engaging in the central credit service plan business by use of exclusive dealing provisions in its agreements, limitation on advertising of affiliation with competitive plans, boycotts of member merchants, refusals to deal, or other restrictions on freedom of choice.

Consent Decrees—Permissive Provisions—Customer Requests—Service Charges.—A central credit service plan was permitted to require member merchants to discount to it all sales invoices from sales made to customers who request that those sales be charged through such plan. Also, it was permitted to impose a reasonable service charge on any member merchant who used the plan's credit information to determine the advisability of extending credit but chose not to process the sales invoice through the plan.

For the plaintiff: Robert A. Bicks, Assistant Attorney General; W. D. Kilgore, Jr., Paul A. Owens, and Leo A. Roth, Attorneys, Department of Justice.

For the defendant: Theodore Sherbow and James J. Doyle, Jr., of Sherbow & Sherbow, Baltimore, Maryland.

Final Judgment

THOMSEN, Chief Judge [*In full text*]: The plaintiff, United States of America, having filed its complaint herein on July 18, 1960, the defendant, Charg-It of Baltimore, Inc., having appeared and filed its answer to such complaint denying the substantive allegations thereof; and the parties hereto, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without admission by any of the parties hereto with respect to any such issue;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of 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 the parties hereto. The complaint states claims upon which relief may be granted under Section 1 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce from unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

[Definitions]

As used in this Final Judgment:

- (A) "Defendant" means Charg-It of Baltimore, Inc., a corporation organized and existing under the laws of the State of Maryland;
- (B) "Member merchant" means a person who has contracted with a credit company for participation in a central credit service plan;
- (C) "Customer" means a person who uses charge account facilities made available at retail stores affiliated with a credit company offering a central credit service plan;
- (D) "Central credit service plan" means a service offered by credit companies to member merchants and customers pursuant to which a member merchant agrees to sell and the credit company agrees to purchase, at stipulated discounts from face value, accounts receivable arising from the purchase of merchandise or services from the member merchant by customers whose credit has been approved by the credit company; such customers are entitled to purchase merchandise or services at any of the member merchants; after purchasing such accounts receivable from the member merchants the credit company assumes the risk and responsibility for billing and collecting such accounts directly from the customers;
- (E) "Accounts receivable" means those assets of a member merchant consisting of the obligations (usually evidenced by a sales slip signed by the customer) of a customer to pay for merchandise or services purchased on credit;
- (F) "Person" means any individual, corporation, partnership, association, firm or other legal entity.

III

[Applicability]

The provisions of this Final Judgment applicable to the defendant shall apply also to each of its subsidiaries, successors, assigns, directors, officers, employees and agents, and to all persons in active concert or participation with the defendant who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[Exclusive Dealing]

- (A) The defendant is enjoined and restrained from, directly or indirectly, entering into, adhering to, maintaining, furthering or claiming any rights under, reviving, adopting or enforcing any provisions of any agreement, relating to a central credit service plan, which are inconsistent with any of the provisions of this Final Judgment;
- (B) The defendant is ordered and directed to delete from all central credit service plan agreements, and is prohibited from inserting in any such agreement hereafter entered into, any provision that its central credit service plan shall be exclusive in character or that the terms and conditions of the agreement will be affected in the event the member merchant contracts with a competing central credit service plan.

V

[Restrictive Practices]

The defendant is enjoined and restrained from, directly or indirectly, entering into, adhering to, maintaining, furthering, enforcing or claiming any rights under any contract, agreement, understanding, plan or program with any other person for the purpose or with the effect of:

(A) Hindering, restricting, limiting, preventing or prohibiting any person from entering into any central credit service plan agreement;

(B) Interfering, in any way, with the participation of any member merchant in any central credit service plan;

(C) Boycotting or otherwise refusing to do business with any person engaged in business as a member merchant;

(D) Conditioning the making or continuing of a central credit service plan agreement on any of the conduct referred to in the foregoing subsections (A), (B) and (C);

(E) Limiting, directly or indirectly, the free choice of any person with regard to his engaging in or participating in any aspect of any central credit service plan;

(F) Limiting, prohibiting or preventing any person with regard to advertising affiliation with any central credit service plan.

VI

[*Exclusive Dealing*]

The defendant is enjoined and restrained from, directly or indirectly:

(A) Canceling or terminating the affiliation or membership of any member merchant with the defendant's central credit service plan, or refusing to do business with any person because or partially because of the fact that or the extent to which he does business with any competitor of defendant;

(B) Excluding, hindering, restricting, limiting or preventing, or attempting to exclude, hinder, restrict, limit or prevent any person from entering into a central credit service plan agreement;

(C) Boycotting or otherwise refusing to do business with any member merchant who qualifies under defendant's standards which are not inconsistent with any provision of this Final Judgment;

(D) Conditioning the making or continuing of a central credit service plan agreement upon a member merchant refusing to enter into or agreeing to limit the extent of doing business under any central credit service plan agreement with any other person;

(E) Conditioning participation in any central credit service plan upon the member merchant selling to the defendant any specified dollar amount or any specified portion of its accounts receivables arising from the sale of merchandise or services on credit;

(F) Requiring any member merchant to disclose to defendant the fact of or the extent to which it is doing business with any other person operating a central credit service plan.

Provided, however, that nothing in subsections (A) or (E) of this Section VI shall be deemed to prohibit the defendant, with respect to central credit service plan agreements heretofore or hereafter entered into by defendant, (i) from terminating any such agreement where the dollar volume of accounts receivable sold to the defendant by the member merchant has been so small as to make such business unprofitable to the defendant, or (ii) from refusing to enter into any such agreement where the reasonably anticipated dollar volume of accounts receivable to be sold to the defendant is so small as to make such business unprofitable to the defendant;

Provided, further, that nothing in this Final Judgment shall prevent defendant (i) from including in its agreement with its member merchants a provision requiring the member merchants to discount with Charg-It all sales invoices from sales made to customers who request that such sales be charged through Charg-It, and/or (ii) from imposing a reasonable service charge upon any member merchant who utilizes credit information obtained from Charg-It's central office to ascertain the advisability of extending credit to a prospective customer, if the member

merchant thereafter decides not to process the sales invoice of such transaction through Charg-It; such service charge to be reasonable and to reflect only actual costs plus a normal profit.

VII

[Notice of Judgment]

The defendant is ordered and directed:

(A) Within thirty (30) days from the date of entry of this Final Judgment to mail a copy of this Final Judgment, or the substance thereof approved as to form and content by plaintiff herein, to each member merchant with whom it has entered into a central credit service plan agreement;

(B) For a period of three years from the date of the entry of this Final Judgment, to furnish a copy of this Final Judgment, or the substance thereof approved as to form and content by plaintiff herein, to any person who hereafter becomes affiliated with the defendant as a member merchant.

VIII

[Compliance Affidavit]

The defendant is ordered and directed, within sixty (60) days from the date of entry of this Final Judgment, to file with the Clerk of this Court, with a copy to the plaintiff herein, an affidavit setting forth the fact and manner of compliance with subsection (B) of Section IV hereof and with subsection (A) of Section VII hereof.

IX

[Enforcement 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 the defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant, relating to any of the matters contained in this Final Judgment; and

(b) Subject to the reasonable convenience of the defendant, and without restraint or interference from it, to interview officers and employees of such defendant, who may have counsel present, regarding any such matter.

Upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, the 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 shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff, except in the course of legal proceedings for the purpose of securing compliance with this Final Judgment in which the United States is a party or as otherwise required by law.

X

[Jurisdiction Retained]

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