

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Boston Market Terminal Co., et al., U.S. District Court, D. Massachusetts, 1950-1951 Trade Cases ¶62,927, (Oct. 8, 1951)

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United States v. Boston Market Terminal Co., et al.

1950-1951 Trade Cases ¶62,927. U.S. District Court, D. Massachusetts. No. 6070, Dated October 8, 1951.

Sherman Antitrust Act

Consent Decree—Transportation and Sale of Fruits and Vegetables—Restrictive Practices and Agreements in the Use of Terminal and Transportation Facilities Prohibited—Contingent Provision.—A government civil action charging a fruit and vegetable terminal, its members, and a railroad with restraining and monopolizing the transportation and sale, at the wholesale level, of fruits and vegetables is terminated by the entry of a consent decree. The terminal is enjoined from refusing to admit as a member any person desiring to act as a receiver, except upon the grounds that the applicant is not financially responsible or the facilities of the terminal are inadequate; enjoined from acting as a receiver or engaging in any business activity other than that presently conducted by it; and ordered to cancel a provision of a lease contract with the railroad and to make every reasonable effort to maintain space and facilities on property of the railroad adequate to accommodate additional members. The members are enjoined from entering into any agreement with any other defendant or any other person to use or refrain from using any specified type of transportation. The terminal and its members are enjoined from requiring any member to direct the shipment of any produce of such members to the terminal, restraining the right of any member to engage in any type of business activity outside the terminal, and requiring the payment by any member of any charge which is discriminatory in favor of one member against another; from entering into any understanding with any person not a member having the effect of fixing any of the rules or practices of the members of the terminal; from adopting any rules which have the effect of restricting the right of any member to receive, sell, or ship by truck; and from entering into any understanding with any person other than the defendants which has the effect of restraining the right of any member to use any type of transportation, giving any such person any control in the operations of the terminal or its members, and subjecting the terminal or its members to any charge for using or to refrain them from using any particular type of transportation. A contingent provision provides that if a judgment is entered against the railroad, the terminal and its members are prohibited from entering into any agreement which prohibits receivers from bringing produce into the terminal by trucks.

For the plaintiff: H. G. Morison, Assistant Attorney General; Gerald J. McCarthy and Sigmund Timberg, Special Assistants to the Attorney General; William D. Kilgore, Jr. and Alfred M. Agress, Trial Attorneys; and George F. Garrity, United States Attorney.

For the defendants: George Alpert for Boston Terminal Market Co., Boston Tomato Co., Inc., Chapin Bros., Inc., Colley Woods Co., Community Produce Co., E. H. Kingman Co., Eaton and Eustis Co., Kingman and Hearty, Inc., Lord and Spencer Co., S. Strock and Co., Samuel J. Shallow Co., Sands Furber and Co., Inc., Sawyer and Co., Inc., Sweeney Lynes and Co., Inc., W. H. Butler and Co., Inc., Winn Ricker and Co., Inc., Henry E. Dodge, Joseph A. Novelline, Andrew D'Arrigo, Anthony J. DiMare, Dominic F. DiMare, Harvey J. Gustin, J. Ernest Gustin, Joseph E. Almeder, John Scalia, Dennis J. Halloran, Ralph L. Gustin, William F. Coady, Francis J. Reardon, Phillip Strazzulia, Frank Strazzulia, and Dominic Strazzulia; Hubert C. Thompson for Louis Sharaf; I. J. Silverman for Mercantile Produce Co.; John L. Saltonstall, Jr. for S. Albertson Co., Inc.; Amos L. Taylor for York and Whitney Co.; and John Finelli for Peter P. Volante.

Final Judgment

SWEENEY, District Judge: [*In full text*] Plaintiff, United States of America, having filed its Complaint herein on October 15, 1946, all the undersigned defendants having appeared and filed their answers to such Complaint

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denying the substantive allegations thereof, and said defendants and plaintiff by their attorneys having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of law or fact herein and without admission by any of said defendants in respect of any such issue:

Now, therefore, before any testimony 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 signatory hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

[*Sherman Antitrust Act*]

This Court has jurisdiction of the parties signatory to this Final Judgment and over the subject matter hereof. The complaint states a cause of action against the undersigned defendants under Sections 1 and 2 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) "BMT" shall mean the defendant Boston Market Terminal Company;
- (B) "New Haven" shall mean the defendant, the New York, New Haven & Hartford Railroad Company;
- (C) "Defendant Receivers" shall mean those persons named in the Complaint herein as defendants and members of BMT;
- (D) "Terminal" shall mean the physical structure and facilities used, owned or leased by BMT for the purpose of unloading, displaying and selling fruit and vegetable produce;
- (E) "Receiver" shall mean any person to whom fruit or vegetable produce is forwarded for wholesale in private transactions;
- (F) "Wholesale" shall mean the sale of fruit and vegetable produce by receivers in quantities of not less than ten packages to jobbers or retailers for resale;
- (G) "Member" shall mean a receiver authorized to use the facilities of the Terminal;
- (H) "Final Judgment against New Haven" shall mean a judgment terminating this action against defendant New Haven, not subject to further review;
- (I) "Person" shall mean an individual, partnership, corporation, association or any other legal entity.

III

[*Applicability of Judgment*]

The provisions of this Final Judgment applicable to any undersigned defendant shall apply to such defendant, its successors and assigns, and to each of its officers, directors, agents, employees and to all other persons acting or claiming to act under, through or for such defendant.

IV

[*Restrictive Rules and Practices Prohibited*]

- (A) Defendant BMT and defendant receivers are jointly and severally enjoined and restrained from adhering to, promulgating, adopting or enforcing any rule or regulation governing the use of the Terminal which is not in conformity with the terms of this Final Judgment;
- (B) Defendant BMT and defendant receivers are jointly and severally enjoined and restrained from adhering to, promulgating, adopting or enforcing any rule or regulation governing the use of the Terminal or taking any action for the purpose or with the effect of:

- (1) Requiring any member to consign or direct the shipment of any, some or all of the produce of such member to the Terminal or any other designated place or locality,
- (2) Restraining in any manner the right of any member to engage in any type of business activity outside the Terminal, or to choose any place to engage therein,
- (3) Requiring the payment by any member of any charge which is discriminatory in favor of one member against another.

[Agreements With Third Persons Prohibited]

(A) Defendant BMT and defendant receivers are jointly and severally enjoined and restrained from entering into, agreeing to or furthering any contract, agreement or understanding with any person not a member of the Terminal, or which does not do business at the Terminal, having the purpose or effect of regulating or fixing any of the rules, regulations or practices of members of the Terminal, except those required by governmental agency.

VI

[Denial of Membership—Report to Attorney General]

(A) Defendant BMT is hereby enjoined and restrained from refusing to admit as a member any person desiring to act as a receiver at the Terminal, except upon the ground that the applicant is not financially responsible or that the facilities of the Terminal are inadequate.

(B) Defendant BMT is hereby ordered and directed to make every reasonable effort and take whatever steps are reasonable or appropriate to maintain (if economically provident) space and facilities on property of the defendant New Haven adequate to accommodate additional members.

(C) In the event that the defendant BMT denies membership to any applicant upon the ground that the facilities of the Terminal are inadequate to accommodate additional members, defendant BMT shall notify the Attorney General, stating the basis therefor. If the Attorney General is not satisfied as to such denial of membership, he shall so notify defendant BMT and defendant BMT shall present a petition to this Court, and evidence in support thereof, to establish that:

- (1) Existing space and facilities will not in view of seasonal variations permit efficient operation if the application is granted, and
- (2) the defendant BMT has complied with the foregoing requirements of subsection (B) above,

the Attorney General shall have the right to be heard, and both parties shall abide by the determination of the court therein.

VII

[Acting as Receiver or in Other Business Activity Prohibited]

Defendant BMT is hereby enjoined and restrained from directly or indirectly acting as a receiver of fruit or vegetable produce, or engaging in any business activity other than that presently conducted by defendant BMT in the operation and maintenance of the Terminal which is inconsistent with the provisions of this Final Judgment.

VIII

[Cancellation of Provision in Lease Contract]

Defendant BMT is ordered and directed to cancel forthwith paragraph 11 of the lease contract between BMT and New Haven, dated October 23, 1928, and defendant BMT is enjoined and restrained from entering into, performing, enforcing, adopting, adhering to, maintaining or furthering or claiming any rights under any contract, agreement, understanding, plan or program for the purpose of continuing or renewing said paragraph 11.

IX

[*Transportation Restrictions and Other Practices Prohibited*]

Defendant BMT and defendant receivers are jointly and severally enjoined and restrained from entering into, adhering to or claiming any rights under any contract, agreement or understanding with any person other than said defendants which has the purpose or effect of:

- (A) Restraining in any manner the right of any member to use any type of transportation in receiving, selling or shipping fruit or vegetable produce, except as to transportation of samples;
- (B) Giving any such person any control over or voice in the operations of BMT or its members while acting as receivers at the Terminal;
- (C) Permitting any such person to use any of the display or selling space or platform space of the Terminal for purposes other than as a receiver of fruit or vegetable produce;
- (D) Subjecting BMT or its members to any charge, directly or indirectly, for using or to refrain them from using any particular type of transportation to bring fruit and vegetable produce into the Terminal or to move it out of the Terminal, or requiring BMT or its members to order any particular routing in order to increase charges which may be made by such person. A routing required by a governmental agency is not construed to be in this subsection (D).

X

[*Restrictions on Use of Terminal and Type of Transportation Prohibited*]

- (A) Defendant BMT and defendant receivers are jointly and severally hereby enjoined and restrained from promulgating, adopting or enforcing any rule or regulation governing the use of the Terminal, or taking any action for the purpose or with the effect of restricting the right of any member to receive, sell, or ship fruit and vegetable produce by truck, wagon or any other type of conveyance;
- (B) Defendant receivers and each of them are hereby enjoined and restrained from entering into any contract, agreement, or understanding with any other defendant or any other person to use or refrain from using any specified type of transportation.

XI

[*Contingent Provision*]

During the period of time between entry of this Final Judgment and entry of a Final Judgment against New Haven, the provisions of Sections V, IX and X of this Judgment shall not be deemed to enjoin those actions, agreements or rules necessary to comply with the requirement of the said defendant New Haven that BMT and the defendant receivers may not bring fruit and vegetable produce into the Terminal by truck. Subsequent to such period of time, Sections V, IX and X shall be in full force and effect provided said Final Judgment against defendant New Haven enjoins New Haven from prohibiting the bringing of fruit and vegetable produce into the Terminal by trucks.

XII

[*Visitation and Compliance*]

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice, upon written request of the Attorney General or an Assistant Attorney General, an on reasonable notice to the defendant made to its principal office, be permitted 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 matters contained in this Judgment, and subject to the reasonable convenience of said defendant, and without restraint or interference from it, to interview officers or employees of the defendant, who may have counsel present, regarding any such matters, and, upon request, any defendant shall submit such reports as from time to time may be necessary to the enforcement of this Judgment. No information obtained by the means provided in this section XII 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.

XIII

[*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, 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.

It is expressly understood, in addition to the foregoing, that the plaintiff may, upon reasonable notice, at any time after entry of this Final Judgment, apply to this Court for modifications of any of the terms herein to prevent any discrimination among members resulting, directly or indirectly, from ownership or use of capital stock of defendant BMT.