

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Boston Fruit & Produce Exchange, H. P. Hood & Sons, Inc., Armour & Co., Berman & Co., Inc., E. F. Deering Co., Inc., H. A. Hovey Co., A. E. Mills & Son, Inc., Beatrice Foods Co., Brockton Cooperative Egg Auction Ass'n, Inc., and New Hampshire Egg Auction, Inc., U.S. District Court, D. Massachusetts, 1950-1951 Trade Cases ¶62,551, (Dec. 21, 1949)**

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United States v. Boston Fruit & Produce Exchange, H. P. Hood & Sons, Inc., Armour & Co., Berman & Co., Inc., E. F. Deering Co., Inc., H. A. Hovey Co., A. E. Mills & Son, Inc., Beatrice Foods Co., Brockton Cooperative Egg Auction Ass'n, Inc., and New Hampshire Egg Auction, Inc.

1950-1951 Trade Cases ¶62,551. U.S. District Court, D. Massachusetts. Civil No. 7734. Filed December 21, 1949.

**Sherman Antitrust Act**

**Consent Decree—Egg Market—Price Fixing—Dissemination of Market Data—Market Rules and Regulations.**—Egg wholesalers, a produce exchange and their associations consent to a judgment in which price fixing is prohibited, limits imposed upon the type of information disseminated by the exchange and market reporters, requirements imposed as to the kind of data to be supplied by dealers to market reporters and analysts, and prohibition imposed on sales of eggs by the use of formulas based upon a premium or discount above or below high or low market reports or averages thereof. The exchange is required to adopt regulations of trading incorporating certain provisions of the decree.

For the plaintiff: Tom C. Clark, Attorney General; Herbert A. Bergson, Assistant Attorney General; George B. Haddock, Assistant Attorney General, all of Washington; William T. McCarthy, United States Attorney; James M. Malloy, and Richard B. O' Donnell, Special Assistants to the Attorney General, and Alfred M. Agress, Special Attorney, all of Boston.

For the defendants: Charles B. Rugg, Boston, for H. P. Hood & Sons, Inc.; Waldo Noyes (Robbins, Noyes & Jansen), Boston, for Brockton Cooperative Egg Auction Ass'n, Inc., and New Hampshire Egg Auction, Inc.; Joseph C. Duggan, New Bedford, Mass., for Bartlett, Varney Co.; Charles W. Bartlett (Ely, Bradford, Bartlett, Thompson & Brown), Boston, for Armour & Co.; Edward J. Duggan, Boston, for Beatrice Foods Co.; Daniel E. Murphy, Boston, for Kennedy & Co., Inc.; George Alpert and William Alpert, Boston, for H. A. Hovey Co., Chapin & Adams Corp., A. E. Mills & Son, Inc., E. F. Deering Co., Inc., and Boston Fruit & Produce Exchange; Max Kabatznick (Kabatznick, Stern & Gesmer), Boston, for Berman & Co., Inc.

**Final Judgment**

Plaintiff, United States of America, having filed its complaint herein on June 21, 1948, and each of the defendants named therein, including those defendants who were named individually and as representatives of the defendant class, having appeared and severally filed their answers to such complaint, denying the substantive allegations thereof; and the defendants named in the complaint having severally and jointly consented to the entry of this final judgment both as to themselves and as representatives of the class of defendants charged in the complaint as class defendants,

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

ORDERED, ADJUDGED AND DECREED as follows:

I

[ *Jurisdiction of Court*]

This Court has jurisdiction of the subject matter herein and of all parties hereto, and the complaint herein states a cause of action against the defendants 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", as amended.

II

The provisions of this judgment applicable to the named and class defendants herein apply to their successors, officers, directors, agents, employees, and to any other persons acting under, through or for such defendants.

III

[ *Definitions*]

As used in this judgment:

(A) "Wholesale" or "at wholesale" means buying or selling transactions in shell eggs involving 10 or more cases on any business day during the calendar months of June to September, inclusive, and 25 or more cases on any business day during any other calendar month.

(B) "New England area" means the territory within the States of Massachusetts, Vermont, New Hampshire, Maine, Connecticut, and Rhode Island.

(C) "Boston area" means the territory within Suffolk, Plymouth, Norfolk, Essex and Middlesex Counties, Massachusetts and Rockingham County, New Hampshire.

(D) "Egg producer" means any individual, partnership, corporation, or other business entity owning hens and regularly engaged in the business of selling the eggs produced by such hens.

(E) "Nearby shell eggs" means eggs produced within the New England area.

IV

[ *Practices Enjoined*]

Each of the named and class defendants herein is hereby perpetually enjoined and restrained from maintaining, operating, or dealing on a Spot Call Board operated within the New England area for the purchase and sale of shell eggs at wholesale, with the purpose or intent of fixing, raising, depressing, or stabilizing any shell egg market prices or quotations thereof.

V

When any named or class defendant herein shall hereafter maintain, operate, or deal on, a Spot Call Board operated within the New England area for the purchase and sale of shell eggs at wholesale, such defendant is hereby ordered to refrain, after the close of the call, from publishing, or communicating to any dealer in or producer of shell eggs, or to any market reporter, any bids or offers which have been made on such Board.

VI

No named or class defendant or defendants herein shall hereafter maintain, operate, or deal on a Spot Call Board operated within the New England area for the purchase and sale of shell eggs at wholesale unless, to his best knowledge and belief, the facilities of such Board are available to all egg cooperatives and to all wholesalers, retailers and producers of, and other persons dealing in, shell eggs, on a non-discriminatory basis.

VII

[ *Dissemination of Market Information*]

The defendant Boston Fruit & Produce Exchange is hereby perpetually enjoined and restrained from publishing or circulating any wholesale market quotations on shell eggs, either orally or in writing, prior to 11:30 A. M. on any business day; and each of the other named and class defendants is hereby perpetually enjoined and restrained from acting collectively with any other defendant in publishing or circulating, or using any common

agency for publishing or circulating, any wholesale market quotations on shell eggs, either orally or in writing, prior to 11:30 A. M. on any business day.

#### VIII

The defendant Boston Fruit & Produce Exchange is hereby perpetually enjoined and restrained from publishing or circulating, either orally or in writing, any wholesale market quotations on nearby shell eggs other than quotations issued by a duly authorized Federal agency, unless such quotations, to the best knowledge and belief of such defendant, meet the requirements hereinafter set forth in this paragraph VIII and in paragraph IX, hereof, and each of the other named and class defendants is hereby perpetually enjoined and restrained from using any common agency for publishing or circulating, or from acting collectively with any other defendant in publishing or circulating, either orally or in writing, any wholesale market quotations on nearby shell eggs, other than quotations issued by a duly authorized Federal Agency, unless such quotations, to the best knowledge and belief of such defendant, meet the requirements hereinafter set forth in this paragraph VIII and in paragraph IX hereof.

The said quotations:

(1) shall be based upon an actual canvass of the wholesale buying and selling transactions of at least 12 wholesale dealers who do substantial business in the Boston area; which canvass shall have been conducted on the day on which such quotations are issued:

(2) shall be based on wholesale purchases and sales within the Boston area of graded for size, uncandled and unpackaged nearby shell eggs, except purchases of shell eggs from an egg producer, which purchases and sales shall have been made by the said 12 or more wholesale dealers in transactions on the day on which such quotations are issued.

(3) shall take the form of a tabulation showing all of the separate prices, in cents per dozen, at which the said 12 or more wholesale dealers shall have reported sales and purchases of graded for size, uncandled and unpackaged nearby shell eggs at whole sale, on the days on which such reports are issued, and also showing the total number of cases of nearby shell eggs thus reported to have been sold and bought at each such separate price.

#### IX

When the defendant Boston Fruit & Produce Exchange or any of the other named and class defendants, acting collectively or through any common agency, shall hereafter circulate reports of nearby shell egg wholesale prices that have been gathered, tabulated and published in accordance with the method permitted in paragraph VIII of this judgment, such defendants are hereby ordered to publish and circulate simultaneously the following supplementary market information:

(1) when premiums above or discounts below the low, high, or average levels of such price reports are used in determining final prices for transactions engaged in and reported by any dealer canvassed in connection with such reports, the range of such premiums or discounts in cents per dozen:

(2) the range of all prices, in cents per dozen, at which all dealers canvassed have reported actual, though unaccepted, offers to buy or sell graded for size, uncandled and unpackaged shell eggs at wholesale, except offers to buy shell eggs from an egg producer and offers to buy or sell on a Spot Call Board.

It is further ordered that, when the said supplementary market information shall be published and circulated as directed herein, it shall be so captioned and so separated from the simultaneously published tabulations of final prices at which nearby shell eggs are being sold or bought at wholesale as to make it clearly recognizable as a supplement to rather than a part of such final price tabulations.

#### X

[ Full Disclosure of Sales Data Required]

Each named and class defendant dealer is hereby ordered, if he participates in any canvass of his wholesale buying and selling transactions conducted by a market reporter:

(1) to disclose to such market reporter all finally determined prices, in cents per dozen, at which wholesale sales and purchases of nearby graded for size, uncandled and unpackaged shell eggs have been concluded within the New England area by the said dealer on the day of and up to the time of such disclosure, except prices of purchases of shell eggs from an egg producer;

(2) to disclose to such market reporter:

(a) all wholesale sales and purchases of nearby graded for size, uncandled and unpackaged shell eggs, except purchases of shell eggs from an egg producer, which have been concluded within the New England area by the said dealer on the day of and up to the time of such disclosure, under any pricing formula which contemplates the addition of any premium to, or the subtraction of any discount from, any base price that has not been determined at the time of such disclosure;

(b) the amount of any such premium or discount in cents per dozen;

(c) the name and level of the market report, quotation, or other base price to which any such premium is to be added, or from which any such discount is to be subtracted, in determining the final price of such sales and purchases;

(3) to disclose to such market reporter all prices, in cents per dozen, at which all actual, though unaccepted, offers to buy or sell nearby graded for size, uncandled and unpackaged shell eggs at wholesale have been made, by the said dealer on the day of and up to the time of such disclosure, except offers to buy shell eggs from an egg producer;

(4) to refrain from stating to such market reporter any price or prices at which such dealer purports to be willing to sell or buy nearby shell eggs at wholesale, except as ordered in subparagraph X (3) herein;

(5) to refrain from expressing any opinion or preference to such market reporter respecting the raising, lowering, or continuance of any wholesale market quotation for nearby shell eggs.

(6) to keep such records, for a reasonable time, of wholesale sales and purchases as would enable a third party to determine the accuracy of the disclosed information, and to have such records available for inspection, during office hours and subject to the reasonable convenience of such defendant, by the Department of Justice.

XI

*[ Use of Pricing Formulas ]*

Each named and class defendant herein is hereby ordered, when buying or selling nearby shell eggs at wholesale in the New England area, to refrain from buying or selling or from contracting to buy or sell under any pricing formula which contemplates or provides that the buying or selling prices shall be based on or at any premium over or at any discount under or identical with any high or low market reports or any average that may be drawn therefrom, unless such reports, to the best knowledge and belief of such defendant, are being regularly gathered, tabulated and published in accordance with the requirements of paragraphs VII, VIII and IX of this judgment, or are being regularly issued by a duly authorized State or Federal agency after 11:30 A. M. on the day of issuance.

XII

Each named and class defendant herein is hereby ordered, when buying or selling nearby shell eggs at wholesale in the New England area, to refrain from buying or selling or from contracting to buy or sell under any pricing formula which contemplates or provides that the buying or selling prices shall be based on or at any premium over or at any discount under or identical with the prices of any one or more bids, offers, sales or purchases made on a Spot Call Board or any price that is derived from such Spot Call Board transaction prices.

XIII

[ *Adoption of Trading Regulations*]

The defendant Boston Fruit & Produce Exchange is hereby ordered to adopt, within 30 days following entry of this final judgment, rules and regulations concerning egg trading which

(a) shall incorporate the requirements imposed upon the said Exchange in paragraphs IV to XII inclusive of this judgment; and

(b) shall establish as regulations of the said Exchange, binding upon such of its members as may now or hereafter regularly buy or sell shell eggs at wholesale, the requirements imposed in paragraphs IV to XIII inclusive of this judgment;

and the said Exchange is further ordered to take such steps thereafter as may be necessary to cause its officers and members, who regularly buy or sell shell eggs at wholesale, to adhere to the said rules and regulations concerning egg trading.

XIV

The defendant Boston Fruit & Produce-Exchange is hereby ordered:

(1) to mimeograph forthwith and here after retain in its files a sufficient number of copies of this Final Judgment to supply all present and future members of the said Exchange who regularly sell or buy shell eggs; and

(2) to circulate by registered mail, within ten days following the entry of this Final Judgment, one such copy thereof to each named or class defendant herein: and

(3) when new members who regularly buy or sell shell eggs shall hereafter join the said Exchange, to furnish each such new member with one copy of this Final Judgment at the time that such new member's application for membership shall be accepted.

XV

[ *Reports and Inspections*]

For the purpose of securing compliance with this judgment, and for no other purpose, and subject to any legally recognized privilege duly authorized representatives of the Department of Justice shall, on the written request of the Attorney General or an Assistant Attorney General, and on reasonable notice to any defendant, be permitted (a) access, during the office hours of any 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 judgment; and (b) subject to the reasonable convenience of such defendant, and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding any such matters. For the purpose of securing compliance with this judgment, any defendant upon the written request of the Attorney General, or an Assistant Attorney General, and upon reasonable notice, shall submit such written reports with respect to any of the matters contained in this judgment as from time to time may be necessary for the purpose of 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 of America is a party for the purpose of securing compliance with this judgment, or as otherwise required by law.

XVI

[ *Jurisdiction Retained*]

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