

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. North Coast Transportation Company, Puget Sound Power & Light Company, Independent Stages, Inc., U.S. District Court, W.D. Washington, 1946-1947 Trade Cases ¶57,608, (Aug. 11, 1947)

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United States v. North Coast Transportation Company, Puget Sound Power & Light Company, Independent Stages, Inc.

1946-1947 Trade Cases ¶57,608. U.S. District Court, W.D. Washington. Civil Action No. 1675. Filed August 11, 1947.

A consent judgment entered in an action charging an attempt to monopolize, and a conspiracy to eliminate competition in the coastwise transportation of passengers by motor bus, in violation of the Sherman Act restrains defendants from entering into or carrying out restrictive agreements with carriers whereby such carriers are required, as a condition to the enjoyment of joint fares, through routes or joint terminal privileges, to refrain from acquiring such advantages from competitors of defendant, and requires one of the defendant corporations, which is wholly owned by the other defendants, and which is maintained as a "fighting ship," to discourage competition, to divest itself of all operating rights by sale to a purchaser having no relationship with any of the defendants.

Consent Judgment

Plaintiff, the United States of America, having filed its complaint herein on the 20th day of November, 1946; and the defendants having appeared and severally filed their answers to such complaint, denying the substantive allegations thereof; all the undersigned parties hereto by their respective attorneys herein having severally consented to the entry of this final judgment herein without trial or adjudication of any issue of fact or law herein, and without admission herein by any party in respect to 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 consent of all parties hereto, it is hereby

ORDERED, ADJUDGED, and DECREED as follows:

[Jurisdiction of Court]

I.

The court has jurisdiction of the subject matter herein, and of all the parties to this judgment, and the complaint states a cause of action against the defendants, and each of them, under Section 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," as amended, commonly known as the Sherman Act (15U. S. C. Secs. 1, 2).

II.

[Judgment Applies to Subsidiaries, Employees]

The provisions of this judgment applicable to any defendant shall apply to each of its subsidiaries, successors, assignees and nominees, and to each of its officers, directors, agents and employees, and to each person claiming to act under, through or for them, or any of them.

[Defendants Enjoined From]

III.

Each of the defendants, Puget Sound Power & Light Company and North Coast Transportation Company (hereinafter referred to as North Coast) is hereby enjoined and restrained from continuing in effect, entering into, performing or enforcing any provision in any contract or arrangement between said defendants or either of them and any carrier, including any feeder line, whereby such carrier is required as a condition to the enjoyment of joint fares, through routes or joint terminal privileges with defendant North Coast to refrain from entering into, or to restrict the scope or the performance of, joint fares, through routes or terminal agreements with competitors of North Coast. Each of said defendants is directed to take such steps as are necessary to waive and to render inoperative such restriction in any existing contract or arrangement with any carrier containing the same, and shall notify all parties to such contracts or arrangements of the waiver of such restrictions, and shall submit to this Court a report in detail of such steps as have been taken in compliance with the terms of this Section III within four (4) months of the date of the entry of this judgment, and shall furnish a copy thereof to the Attorney General.

[*One Defendant Required to Divest Itself of Operating Rights*]

IV.

Defendant Independent Stages, Inc. (hereinafter referred to as Independent), is hereby directed to divest itself completely of all of its operating rights or claims thereto (hereinafter collectively referred to as operating rights) by effecting the sale of said operating rights to a purchaser, or purchasers, that shall have no corporate or other relationship, direct or indirect, by security ownership, management control or otherwise, with any of the defendants named in the complaint herein or with any person affiliated herewith.

Advertisements for bids for the purchase of Independent's operating rights, in a form approved by the Assistant Attorney General in charge of the Antitrust Division, shall be made twice weekly for a period of four (4) weeks in a daily newspaper of general circulation in the cities of Seattle, Washington; Portland, Oregon; and San Francisco and Los Angeles, California, and in each issue of the weekly periodical known as "Traffic World" for four (4) consecutive weeks. Such advertisements shall contain adequate information as to all assets of Independent used or useful in the transportation of passengers (including but not limited to operating rights, interest in busses, and depot rights, if any) and as to the interests of other parties which may have an interest in such assets.

Prospective purchasers shall submit bids for purchase of the operating rights of Independent. Independent shall immediately report to the Attorney General herein all bids and proposals received by it pursuant to said public offer. Within ten (10) days after the date specified for the closing of bids in such advertisement, Independent shall submit to the Court the bids and proposals received and shall at that time petition the Court for permission to sell its operating rights to the highest bidder therefor.

If, after a hearing on the said petition at which all of the interested persons shall have an opportunity to be heard, the Court determines that acceptance of the highest bid for the said operating rights will not bring about substantial competition in the transportation of passengers over the route or routes involved, the Court shall award the said operating rights to the next highest bidder deemed by it qualified to bring about such substantial competition. Upon the Court so determining the successful bidder, defendant Independent shall thereupon by suitable instruments convey its entire right, title and interest in such operating rights to such successful bidder upon payment of the consideration therefor.

Any party submitting a proposal to purchase the said operating rights of Independent shall have the option and privilege at the time of submitting his bid to declare an intention to purchase all or any of the equipment leased or otherwise generally furnished by North Coast to Independent. In the event that the successful bidder for the purchase of the operating rights of Independent as determined by the Court shall have declared such an intention to purchase the said equipment at the time of submitting his bid, said busses and other equipment so specified by the approved purchaser as desired by him shall be conveyed to him for a price to be agreed upon by such parties as being the fair and reasonable market value thereof. In the event of failure on the part

of such parties to agree on such reasonable price the Court, after hearing the interested persons shall fix such reasonable price.

Pending determination by the Court of the successful bidder and the conveyance thereto of the said operating rights of Independent, North Coast and Independent shall take all steps necessary to preserve the operating rights of Independent, provided, however, that upon such conveyance being made such responsibility of said defendant herein shall cease.

In the event consummation of the purchase of said operating rights by a purchaser or purchasers approved by the Court pursuant to the foregoing paragraphs shall require the consent or approval of the Interstate Commerce Commission, approval of such purchase by the Court shall be subject to the obtaining of such approval of said Commission and the parties shall promptly file and diligently prosecute all requisite applications therefor. In the event such approval of any bid by the said Commission is required.

1. The approved bidder shall deposit with the Clerk of the Court cash or a certified check payable to the order of Independent in the amount of the bid, to be delivered to Independent, or order, upon delivery to such purchaser of the conveyance of said operating rights, but to be returned to the bidder if such approval is denied;
2. Contemporaneously, Independent shall deposit with the Clerk of the Court a suitable instrument conveying its entire right, title and interest in or claim to its aforesaid operating rights to such successful bidder, to be delivered to the said purchaser upon the granting of the required approval by the said Commission of said conveyance.

Further, in the event such approval of any bid by the said Commission is required, the approved bidder shall have the option of

1. Granting Independent written permission to suspend all operations under its said operating rights pending the determination by the said Commission of the bidder's application for approval of his acquisition of such rights. In such event the responsibility of defendants North Coast and Independent to preserve such operating rights shall be terminated for the purposes and within the terms of this judgment;
2. Or entering into an agreement with Independent for the continuance of operations and such other steps as may be necessary to preserve the operating rights of Independent by which the approved bidder shall agree to pay to Independent monthly upon receipt of bill therefor the excess, if any, of expenses paid and liabilities incurred over the revenues received by Independent in the operation of the services covered by such operating rights, and by which Independent shall agree to pay to such successful bidder any excess of revenues received over expenses paid and liabilities incurred in the operation of such services, in the event the conveyance of said operating rights to such bidder is approved by the Interstate Commerce Commission.

In the event that divestiture of the operating rights of Independent shall not be consummated within such time as the Court shall deem reasonable pursuant to the procedure set forth in this section, any of the parties thereto shall be at liberty to apply to the Court for such other and further relief as may seem desirable to the end that actual divestiture of the said operating rights of Independent may be accomplished.

[Defendants Enjoined From Acquiring Such Operating Rights]

V.

The defendants are hereby severally and jointly restrained and enjoined from hereafter acquiring or reacquiring any of the operating rights now owned or claimed by defendant Independent, and from acquiring directly or indirectly any stock or other financial or management interest or control over the purchaser of the said operating rights under Section IV hereof, or its successors or assignees.

VI.

Nothing contained in this judgment shall be deemed to restrain or prevent the defendants or any of them, from entering into any agreement or taking any action approved by the Interstate Commerce Commission which under the law in effect at the time of such approval is, when so approved, exempt from the provisions of the antitrust laws.

[*Access to Record of Defendant*]

VII.

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 Assistant Attorney General, and on reasonable notice to the defendant made to its principal office be permitted (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 the defendant relating to any matter continued in this judgment; (2) subject to the reasonable convenience of said defendants and without restraint or interference from any of them, to interview officers or employees of such defendants, who may have counsel present, regarding any such matters; and (3) upon such request said defendants shall submit such reports as might from time to time be reasonably necessary to the enforcement of this judgment, *provided* however, that no information obtained by the means provided in this paragraph 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.

[*Jurisdiction Retained*]

VIII.

Jurisdiction of this cause is retained for the purpose of enabling any of the parties hereto to apply to the Court at any time for, and for the court to make, 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 provisions thereof, for the enforcement of compliance therewith, or for the punishment of violations therefor.