

# Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Ideal Baking Co. of Paris, Inc., Cotton Baking Co., Inc., and Wolf Baking Co., Inc., U.S. District Court, M.D. Louisiana, 1978-1 Trade Cases ¶62,119, (Apr. 12, 1978)

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United States v. Ideal Baking Co. of Paris, Inc., Cotton Baking Co., Inc., and Wolf Baking Co., Inc.

1978-1 Trade Cases ¶62,119. U.S. District Court, M.D. Louisiana, Civil No. 75-73, Entered April 12, 1978, (Competitive impact statement and other matters filed with settlement: 42 *Federal Register* 60963, 43 *Federal Register* 14162).

Case No. 2434, Antitrust Division, Department of Justice.

## Sherman Act

**Price Fixing: Bidding Practices: Exchange of Information: Bakery Products: Consent Decree.**— Bakery firms in the Louisiana area were enjoined by a consent decree from (a) entering into any agreement to fix prices, discounts or the production or sale of bakery products and submitting noncompetitive, collusive or rigged bids; (b) coercing any other person to adopt specific prices or discounts, rig bids or limit or reduce the production of bakery products; and (c) exchanging any information with competitors, during a ten-year period, concerning price changes, future prices and submission of bids. However, defendants could enter into a *bona fide* purchase or sale when the other person was either purchasing bakery products on his own behalf or acting as purchasing agent or representative of any third person, and to communicate information in connection with those transactions. The decree did not prohibit transmission of information regarding defendants' bakery products price list, regularly issued in the course of business and previously released and circulated to the trade generally. The injunctions contained in the decree did not apply to relations solely between a defendant and a parent or subsidiary of, or corporation under common control with, the defendant or between the officers, directors, agents and employees thereof.

**For plaintiff:** John H. Shenefield, Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, Donald A. Kinkaid, J. Albert Kroemer, and David A. Harris, Attys., Dept. of Justice. **For defendants:** Robert McWhirter, of McWhirter and Gandy, Paris, Tex., for Ideal Baking Co. of Paris, Inc.; C. Coleman Bird, of Wald, Harkrader & Ross, Washington, D. C., for Cotton Baking Co., Inc. and Cotton Bros. Baking Co., Inc.; Tom F. Phillips, of Taylor, Porter, Brooks & Phillips, Baton Rouge, La., for Colonial Baking Co. of Gulfport; William H. Jeffress, Jr., of Miller, Cassidy, Larroca & Lewin, Washington, D. C., for Huval Baking Co., Inc.; Phillip A. Wittmann, of Stone, Pigman, Walther, Wittmann & Hutchinson, New Orleans, La., Breazeale, Sachse & Wilson, Baton Rouge, La., for Wolf Baking Co., Inc.

## Final Judgment

WEST, D. J.: Plaintiff, United States of America, having filed its complaint herein on February 28, 1975, and the plaintiff and the defendants, 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 party with respect to any such issue, and without this Final Judgment constituting evidence or admission by any party with respect to any such issue,

Now, Therefore, before the taking of any testimony and without 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 over the subject matter herein and the parties hereto. The complaint states a claim against the defendants upon which relief may be granted under Section I of the Sherman Act, 15 U. S. C. §1.

### **II**

### **[ Definitions]**

As used in this Final Judgment:

- (A) "Bakery products" shall include, but not be limited to, items such as white sliced bread, whole wheat and other varieties of bread, rolls, buns, specialty items, cake, sweet rolls and other confectionaries;
- (B) "Discount" means any percentage or other reduction from the regular or list prices charged by any of the defendants;
- (C) "Person" means any individual, partnership, firm, association, corporation or other business or legal entity; and
- (D) "Control" means at least a 50 percent direct or indirect ownership interest in the controlled person by the controlling person.

### **III**

### **[ Applicability]**

The provisions of this Final Judgment are applicable to the defendants and to each of their officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

### **IV**

### **[ Price Fixing]**

Each defendant is enjoined and restrained from directly or indirectly entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan, program, combination or conspiracy with any other person engaged in the production and sale of bakery products to:

- (1) fix, determine, maintain or stabilize prices for the sale of bakery products;
- (2) fix, determine, maintain, stabilize or adhere to specific or uniform discounts for the sale of bakery products or to limit, reduce, remove or eliminate such discounts;
- (3) submit noncompetitive, collusive or rigged bids or quotations or not to submit any bid or quotation for the sale of bakery products;
- (4) fix, determine, maintain, stabilize, limit or reduce the production or sale of bakery products.

### **V**

### **[ Coercion]**

Each defendant is enjoined and restrained from directly or indirectly soliciting, inducing or coercing any other person engaged in the production and sale of bakery products to:

- (1) adopt or adhere to uniform or specific prices for the sale of bakery products;
- (2) adopt or adhere to uniform or specific discounts for the sale of bakery products or to limit, reduce, remove or eliminate such discounts;

- (3) refrain from bidding or submitting any price quotation for the sale of bakery products, or to submit a bid or price quotation at a uniform or specific price;
- (4) limit or reduce the production or sale of bakery products.

## VI

### [ *Exchange of Information* ]

For a period of ten (10) years from the date of entry of this Final Judgment, each defendant is enjoined and restrained from directly communicating to any other person engaged in the production and sale of bakery products information concerning:

- (1) future prices at which, or terms or conditions upon which, bakery products will be sold or offered for sale by said defendant;
- (2) consideration by said defendant of changes or revisions in the prices at which, or the terms or conditions upon which, said defendant sells or offers to sell bakery products;
- (3) whether any bid or price quotation will be submitted by said defendant to any person.

## VII

### [ *Bona Fide Transactions* ]

(A) Nothing in this Final Judgment shall prohibit any defendant from:

- (1) entering into or carrying out a bona fide purchase or sale transaction involving such defendant and any other person engaged in the production and sale of bakery products, when such person is either purchasing bakery products on his own behalf or acting as a purchasing agent or group buying representative on behalf of any third person; or
- (2) communicating information to another person engaged in the production and sale of bakery products in the course of, and related to, negotiating for, entering into, or carrying out a transaction as described in Section VII(A)(1).

(B) Nothing in Sections V or VI hereof shall prohibit the transmission, without additional comment or explanation, to another person engaged in the production and sale of bakery products, upon the request of said person, of such defendant's bakery products price list, or any change therein, regularly issued in the course of business, which price list, or said change, had been previously released and circulated to the trade generally.

## VIII

### [ *Subsidiaries* ]

The injunctions contained in this Final Judgment shall not apply to relations solely between a defendant and a parent or subsidiary of, or corporation under common control with, such defendant or between the officers, directors, agents and employees thereof.

## IX

### [ *Notice* ]

(A) Each defendant is ordered and directed to furnish within ninety (90) days after the date of entry of this Final Judgment a copy thereof to each of its officers and directors and to each of its agents and employees having sales supervisory and/or pricing responsibility for bakery products.

(B) Each defendant is ordered and directed to furnish a copy thereof to each successor to those officers, directors, agents and employees described in subsection (A) of this Section IX, within thirty (30) days after each such successor is employed by or becomes affiliated with the defendant.

(C) Each defendant is ordered and directed to file with this Court and serve upon the plaintiff within one hundred twenty (120) days from the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with subsection (A) of this Section IX.

## **X**

### **[ Inspections]**

(A) For the purpose of determining or securing compliance with this Final Judgment, any duly authorized representative 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 any defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(1) 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, who may have counsel present, relating to any matters contained in this Final Judgment; and

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

(B) A defendant upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division shall submit such reports in writing with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

No information obtained by the means provided in this Section X 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 United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at any time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents which is of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the defendant is not a party.

## **XI**

### **[ Retention of Jurisdiction]**

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 or for the modification of any of the provisions herein and for the enforcement of compliance herewith and the punishment of the violation of any of the provisions contained herein.

## **XII**

### **[ Public Interest]**

Entry of this Final Judgment is in the public interest.