

[¶ 60,800] United States v. The AAV Companies, ARA Services, Inc., and Western Vending Machine Co.

U. S. District Court, Southern District of Ohio, Western Division. Civil Action No. 8698. Entered March 22, 1976 (Competitive impact statement and other matters filed with settlement: 41 *Federal Register* 2403).

Case No. 2303, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing—Vending Machines—Cigarette Prices—Customer Commissions—Consent Decree.—Three vending machine operators were prohibited by a consent decree from agreeing on cigarette prices and commissions paid to customers, allocating customers, or exchanging information on cigarette prices or commissions. A specified notice of the consent decree had to be placed in a local newspaper. See ¶ 1610, 4630, 4730.

For plaintiff: Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, Bernard M. Hollander, John A. Weedon, Robert S. Zuckerman, and Jerome C. Finefrock, Trial Atty., Attys., Antitrust Div., Dept. of Justice. For defendants: Ronald J. Goodman, Trial Atty., Cincinnati, Ohio, Jules L. Markowitz, Cleveland, Ohio, for AAV Companies; C. R. Beirne, Trial Atty., Cincinnati, Ohio, John T. Loughlin, of Bell, Boyd, Lloyd, Haddad & Burns, for ARA Services, Inc.; William B. Peterman, Trial Atty., Cincinnati, Ohio, for Western Vending Machine Co.

¹⁹ On the issue of establishing intent for a § 2 violation, see also *International Railways of Central America v. United Brands* [1976-1 TRADE CASES ¶ 60,764], slip op. 2303 (2d Cir. March 4, 1976).

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Final Judgment

HOGAN, D. J.: Plaintiff, United States of America, having filed its Complaint herein on January 16, 1973 and the plaintiff and the defendants, by their respective attorneys, having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence or an admission by any party signatory 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 as aforesaid, it is hereby,

Ordered, Adjudged and Decreed as follows:

I

[Jurisdiction]

This Court has jurisdiction of the subject matter of this action and of each of the parties hereto, and the Complaint states claims upon which relief may be granted against defendants and each of them 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", commonly known as the Sherman Act, as amended (15 U. S. C. A. § 1). Entry of this Judgment is in the public interest.

II

[Definitions]

As used in this Final Judgment:

(A) "Cincinnati Area" means the City of Cincinnati, Ohio, and its surrounding area, including the Counties of Hamilton, Clermont and Butler in the State of Ohio, and the Counties of Kenton, Campbell and Boone in the Commonwealth of Kentucky;

(B) "Vending Machine" means any device which dispenses cigarettes automatically when appropriate coins are inserted;

(C) "Location" means any business or other establishment in the Cincinnati Area at which one or more vending machines are maintained in operation by one or more vending machine operators;

(D) "Vending Machine Operator" means any person who owns vending machines which are in operation in locations other than the vending machine operator's place of business;

(E) "Person" means any individual, partnership, firm, corporation, association or other business or legal entity;

(F) "Customer" means any person who operates a location; and

(G) "Vending Machine Business" means virtually all of the locations of a vending machine operator.

III

[Applicability]

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

IV

[Price Fixing/Allocation]

Each defendant is enjoined and restrained, individually and collectively, from entering into, adhering to, enforcing, furthering, maintaining or claiming any rights under, any contract, agreement, understanding, plan or program with any vending machine operator not owned or controlled by such defendant, directly or indirectly to:

(A) Fix, raise or maintain prices or other terms or conditions of and for the sale to the public of cigarettes at any location through a vending machine;

(B) Fix, raise or maintain commissions or payments to the owner of any location or other terms and conditions, for the placement of one or more vending machines in a location;

(C) Divide, allocate or apportion customers or locations;

(D) Refrain from soliciting the business of any customer or potential customer;

(E) Refrain from placing a vending machine in any location.

V

[Exchange of Information]

Each defendant is enjoined and restrained from:

(A) Discussing or exchanging information with any vending machine operator concerning the prices charged, or to be charged, for cigarettes sold through a vending machine or machines in any location;

(B) Discussing or exchanging information with any vending machine operator concerning the commissions paid, or to be paid, to any customer or potential customer.

Cited 1976-1 Trade Cases
U. S. v. AAV Companies

VI

[*Notice*]

The defendants shall jointly within thirty (30) days of the date of the entry by this Court of this Final Judgment publish one day a week for two consecutive weeks a notice in each edition of the Cincinnati Enquirer, which notice shall appear in such publication in the Business Section, and which notice shall read as follows:

NOTICE

NOTICE IS HEREBY GIVEN THAT A CONSENT JUDGMENT HAS BEEN ENTERED BY THE UNITED STATES DISTRICT COURT IN THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION, IN CIVIL ACTION NO. 8698, ENTITLED: UNITED STATES OF AMERICA v. THE AAV COMPANIES; ARA SERVICES, INC.; and WESTERN VENDING MACHINE COMPANY.

THE COMPLAINT IN THIS CASE ALLEGED A CONSPIRACY BETWEEN DEFENDANTS AND CO-CONSPIRATORS TO FIX PRICES AND COMMISSIONS AND TO ALLOCATE CUSTOMERS WITH RESPECT TO THE SALE OF CIGARETTES THROUGH VENDING MACHINES IN LOCATIONS OPEN TO THE GENERAL PUBLIC IN THE CINCINNATI AREA. WHILE THE CONSENT JUDGMENT PROHIBITS THE DEFENDANTS FROM ENGAGING IN SUCH ACTIVITIES, SAID CONSENT JUDGMENT DOES NOT CONSTITUTE EVIDENCE OR AN ADMISSION BY ANY OF THE DEFENDANTS WITH RESPECT TO ANY OF THE ALLEGATIONS IN THE COMPLAINT.

THE CONSENT JUDGMENT HAS BEEN FILED WITH THE UNITED STATES DISTRICT COURT IN CINCINNATI, OHIO, AND SAID CONSENT JUDGMENT IS AVAILABLE TO THE PUBLIC FOR INSPECTION AT THE OFFICE OF THE CLERK OF THE UNITED STATES DISTRICT COURT IN CINCINNATI, OHIO.

VII

[*Exceptions*]

(A) This Final Judgment shall not apply to relations between a defendant and a parent or subsidiary of, or a corporation under common control with, such defendant.

(B) The provisions of Subdivisions (D) and (E) of Paragraph IV shall not be applicable to covenants not to compete, rea-

sonable as to time and geographic area, entered into in good faith and on a non-reciprocal basis between a defendant and another vending machine operator ancillary to the purchase or sale of the vending machine business of a defendant or other vending machine operator.

(C) The provisions of Paragraph V shall not be applicable to discussions or exchanges of information between a defendant and another Vending Machine Operator incidental to bona fide negotiations for the purchase or sale of the vending machine business of a defendant or another vending machine operator, except that such discussions or exchanges of information shall not include the names and addresses of customers.

VIII

[*Inspection*]

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, upon 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 (a) 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 Final Judgment, and (b) 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. 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 VIII shall be divulged by any representative of the Department of Justice to any person except a duly authorized representative of the Executive Branch of the United States and except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

Court Decisions

IX

[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 or directions as

may be necessary or appropriate for the construction or the carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the purpose of enabling the plaintiff to apply to this Court for the enforcement of compliance herewith and for the punishment of violation hereof.