

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Brink's, Inc., and Wells Fargo Armored Service Corp., U.S. District Court, N.D. Georgia, 1979-2 Trade Cases ¶62,902, (Jul. 13, 1979)

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United States v. Brink's, Inc., and Wells Fargo Armored Service Corp.

1979-2 Trade Cases ¶62,902. U.S. District Court, N.D. Georgia, Atlanta Division, Civil Action No. C77-1027A, Entered July 13, 1979, (Competitive impact statement and other matters filed with settlement: 44 *Federal Register* 15798).

Case No. 2592, Antitrust Division, Department of Justice.

Sherman Act

Allocation of Markets: Bid Rigging: Exchange of Information: Permitted Activities: Consent Decree.—

Two armored car service companies were enjoined by a consent decree from dividing markets for armored car service or related services; rigging bids; and communicating with anyone in the industry regarding future prices or terms and future bids. The decree barred the two firms for ten years from communicating with others in the industry about current prices or terms. Permitted conducts under the decree included: activities needed for regulatory compliance; intra-industry information exchanges for (a) coordination and scheduling of services, (b) undertaking services for one another, (c) joint labor negotiations, and (d) influencing government; joint bidding and participation in bidding conferences conducted by a customer or potential customer.

For plaintiff: John H. Shenefield, Asst. Gen., William E. Swope, Charles F. B. McAleer, Donald A. Kinkaid, Charles C. Murphy, Jr., John T. Orr, Jr., and James M. Griffin, Attys., Dept. of Justice. **For defendants:** Donovan Leisure Newton & Irvine, by Samuel W. Murphy, Jr., Trotter, Bondurant, Griffin, Miller & Hishorn, by Emmet J. Bondurant, for Brink's Inc.; Sullivan & Cromwell, by William E. Willis, Sutherland, Asbill & Brennan, by D. Robert Cumming, Jr., for Wells Fargo Armored Service Corp.

Final Judgment

Freeman, D. J.: Plaintiff, United States of America, having filed its Complaint herein on June 21, 1977, and plaintiff and defendants Brink's, Incorporated and Wells Fargo Armored Service Corporation, by their respective attorneys, having consented to the making and entry of this Final Judgment, without admission by any party in respect to any issue or allegation and without this Final Judgment's constituting evidence or an admission by any party hereto with respect to any such issue or allegation;

Now, Therefore, before any testimony has been taken herein, without trial or adjudication of any issue of fact or law, and upon consent of the parties hereto, it is

Ordered, Adjudged and Decreed as follows:

I

[Jurisdiction]

This Court has jurisdiction over the subject matter of this action and of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendants under [Section 1 of the Sherman Act](#) (15 U. S. C. §1).

II

[Definitions]

As used in this Final Judgment:

- A. The term “armored car service” shall mean the arranging for and providing of ground transportation of valuables by armored vehicle under guard in the United States.
- B. The term “related services” shall mean coin sorting and wrapping, preparation and distribution of payrolls, air courier service (the arranging for and providing of air transportation of valuable items under guard) and ground courier service (the arranging for and providing of transportation of items of small monetary value, such as cancelled checks, computer data and mail, by station wagon, panel truck or other non-armored vehicle).
- C. The term “person” shall mean any natural person, proprietorship, partnership, firm, corporation or any other legal or business entity.
- D. The term “customer” shall mean any person who or which purchases armored car service or related services.
- E. The term “common control” shall mean 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 Brink's, Incorporated and Wells Fargo Armored Service Corporation and shall apply also to their subsidiaries, affiliates, successors and assigns; to their respective directors, officers, agents and employees and to all persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise. This judgment shall not apply to acts not in or affecting the foreign or domestic commerce of the United States.

IV

[Markets; Bids; Price Information]

- A. The defendants are enjoined and restrained from entering into, adhering to, claiming or maintaining any right under any agreement or understanding or concert of action with any other person engaged in the business of providing armored car service to:
 - (1) Divide, allocate or apportion customers, territories or markets for armored car service or related services;
 - (2) Submit any collusive, non-competitive or rigged bid or price quotation or to refrain from submitting any bid or price quotation to any customer for armored car service or related services.
- B. The defendants are enjoined and restrained from communicating with any other person engaged in the business of providing armored car service except as permitted by Section V hereof, concerning:
 - (1) future prices at which, or contractual terms or conditions upon which, armored car service or related services will be offered or provided;
 - (2) consideration of changes or revisions in the prices at which, or the contractual terms or conditions upon which armored car service or related services will be offered or provided; and
 - (3) whether any bid or price quotation will or will not be submitted to any person for armored car service or related services.
- C. For a period of ten (10) years from the entry of this Final Judgment, defendants are enjoined and restrained from communicating with any other person engaged in the business of providing armored car service concerning current prices at which, or current terms or conditions upon which, armored car services or related services are provided except as permitted by Section V hereof.

V

[Permitted Activity]

Nothing in this Final Judgment shall prohibit defendants from:

- A. Complying with any order or regulation of the United States Interstate Commerce Commission, state public utility regulatory authority or any similar local, state or federal regulatory authority having jurisdiction over the defendants, or taking any action in accordance with the practices or procedures authorized or contemplated by Section 5a of the Interstate Commerce Act (49 U. S. C. 5b) and the regulations thereunder (49 C. F. R. 1331);
- B. Exchanging information or agreeing with any other person engaged in the business of providing armored car service or related services, or both, regarding the coordinating and scheduling of pickups, deliveries or exchanges of cargoes between defendants and any such person;
- C. Engaging in necessary communications with any other person engaged in the business of providing armored car service or related services, or both, in the course of, and related to, negotiating for, entering into, or carrying out a contract pursuant to which one of said persons agrees to provide armored car service or related services, or both, for or on behalf of the other said person;
- D. Exchanging information necessary to conduct joint labor negotiations and collective bargaining under the federal labor laws with any other person engaged in the business of providing armored car service or related services; however, nothing herein shall authorize discussion of future prices or future bids or quotations to be submitted to any person by an armored car service or related services company;
- E. Engaging in necessary communications with any other person engaged in the business of providing armored car service or related services in the course of, and related to, negotiating for, entering into, or carrying out a contract pursuant to which defendants would acquire or be acquired by such other armored car service or related services company;
- F. Engaging in necessary communications with any other person engaged in the business of providing armored car service or related services for the purpose of proposing or supporting legislation or the adoption or modification of local, state or Federal rules, regulations or policies relating to the provision of armored car service or related services; however, nothing in this subparagraph F shall authorize discussion of future prices or future bids or quotations to be submitted to any person by an armored car service or related services company;
- G. Submitting to a customer a bid for armored car service or related services which is jointly entered with any other person engaged in the business of providing armored car service or related services in cases where defendants do not operate in the entire area of service contemplated by the bid, and the customer has notice that the bid is jointly entered; or
- H. Participating in a bidding conference conducted by a customer or potential customer.

VI

[Intra-Enterprise Relations]

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

VII

[Recordkeeping]

For a period of five (5) years from the date of entry of this Final Judgment, each defendant is ordered to make and maintain an annual record of the steps such defendant has taken during the preceding year to advise its appropriate officers, directors and employees of its and their obligations under this Final Judgment.

VIII

[Notification and Monitoring]

Each defendant is ordered and directed to:

- A. Furnish a copy of this Final Judgment to each of its officers and directors and to each of its agents and employees having sales, supervisory and/or pricing responsibility for armored car service or related services, or both, within ninety (90) days after the date of entry of this Final Judgment;
- B. Furnish a copy of this Final Judgment to each successor to those persons described in subparagraph A hereof within thirty (30) days after each such successor is employed by or becomes affiliated with such defendant in such capacity;
- C. Obtain from each such person furnished a copy of this Final Judgment pursuant to subparagraphs A and B hereof a signed receipt therefor which receipt shall be retained in the defendant's files;
- D. Attach to each copy of this Final Judgment furnished pursuant to subparagraphs A and B hereof a statement advising each person of his obligations and of such defendant's obligations under this Final Judgment, and of the criminal penalties which may be imposed upon him and/or upon such defendant for violation of this Final Judgment;
- E. Establish and implement a plan for monitoring compliance with the terms of this Final Judgment, by the persons described in subparagraphs A and B hereof; and
- F. File with this Court and serve upon the plaintiff within one hundred and twenty (120) days after the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with subparagraphs A, C, and D hereof.

IX

[Inspection and Compliance]

- A. For the purpose of determining or securing compliance with this Final Judgment, any duly authorized representative 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 either defendant made to its principal office, be permitted, subject to any legally recognized privilege:
 - 1. Access during the office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents related to any matter contained in this Final Judgment in the possession or under the control of such defendant, which may have counsel present; 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 matter.
- B. Each 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, under oath if requested, with respect to any of the matters contained in this Final Judgment, as may from time to time be requested.

No information or documents obtained by the means provided in this Section IX 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 either defendant to plaintiff, said 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 said defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which said defendant is not a party.

X

[*Retention of Jurisdiction*]

Jurisdiction is retained by this Court 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 of any of the provisions thereof, for the enforcement of compliance therewith and for the punishment of violations thereof.

XI

[*Public Interest*]

Entry of this Final Judgment is in the public interest.