

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Laub Baking Co., et al., U.S. District Court, N.D. Ohio, 1969 Trade Cases ¶72,874, (Sept. 8, 1969)

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United States v. Laub Baking Co., et al.

1969 Trade Cases ¶72,874. U.S. District Court, N.D. Ohio, Eastern Division. Civil Action No. C-67-850. Entered September 8, 1969. Case No. 1971 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Exchange of Information—Bakeries—Consent Decree.—Bakeries were prohibited by a consent decree from entering agreements fixing prices, submitting collusive bids and communicating or exchanging price information with other bakeries concerning the sale of bakery products. A prohibition against exchanging information does not apply to the communication of such information in the course of negotiating or carrying out *bona fide* purchase or sale transactions, subject to the ban against agreements. The decree prohibits joining trade associations with the knowledge that their activities are inconsistent with the decree. Affidavits of noncollusion are required for bids and quotations required to be sealed when submitted for sales in a designated market. Prices must be reviewed and set independently. Fair trade activities are permitted.

Consent Judgments—Government's Election Regarding Contempt Proceedings.—A consent decree provides that if the government should institute contempt proceedings against defendants with respect to a set of facts that it believes constitutes a violation of the terms of both the decree and a judgment of any other court, then the government will elect the court in which to institute the action and, upon such election, will not institute another contempt action based upon substantially the same set of facts in any other court.

For the plaintiff: Baddia J. Rashid, Director of Operations, Antitrust Div., Dept. of Justice, Harry N. Burgess, Carl L. Steinhouse, Dwight B. Moore, Robert J. Ludwig, and William F. Costigan, Attys., Dept. of Justice.

For the defendants: Walter A. Bates, for American Bakeries Co.; John H. Schafer, for Continental Baking Co.; Richard J. Cusick, for Laub Baking Co.; Tom Ford, for Alfred Nickles Bakery, Inc.; and David L. Foster, for Ward Foods, Inc.

Final Judgment

BATTISTI, D. J.: Plaintiff, United States of America, having filed its Complaint herein on November 14, 1967, and defendants Laub Baking Company; American Bakeries Company; Continental Baking Company; Alfred Nickles Bakery, Inc.; and Ward Foods, Inc., by their respective attorneys, having consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, without admission by any party in respect to any such issue, and without this Final Judgment constituting evidence with respect to any such issue;

Now, Therefore, before the taking of any testimony and upon said consent of the parties hereto the Court hereby determines that the proceeding herein is terminated as to the aforesaid consenting defendants and directs entry of Final Judgment as to all of plaintiff's claims herein against said consenting defendants and as to said consenting defendants, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[Jurisdiction]

This Court has jurisdiction of the subject matter hereof and the parties consenting hereto. The Complaint states claims against the defendants upon which relief may be granted 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.

II

[Definitions]

As used in this Final Judgment:

- (A) “Person” means any individual, corporation, partnership, firm, association or other business or legal entity.
- (B) “Bakery product” means any type of bread or bread type buns or rolls.
- (C) “Akron-Canton-Cleveland-Mansfield market” means the territory encompassed by the Counties of Cuyahoga, Lorain, Medina, Summit, Wayne, Stark, Ashland, Richland, Lake, Geauga, and Portage in the State of Ohio.

III

[Applicability]

The provisions of this Final Judgment applicable to each of the defendants shall also apply to each of its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise, but shall not apply to activities between a defendant, its officers, directors, agents or employees and its parent or subsidiary companies, or affiliated corporations in which 50% or more of the voting stock is owned by a defendant's parent or subsidiary companies or which is in fact controlled by the defendant or such defendant's parent or subsidiary companies.

IV

[Prices, Bids, Exchange of Information]

Each defendant is enjoined and restrained from entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan or program with any other person, directly or indirectly, to:

- (A) Fix, determine, maintain or stabilize prices, discounts or other terms or conditions for the sale of any bakery product to any third person;
- (B) Submit collusive or rigged bids or quotations or to allocate any such bids or quotations for the sale of any bakery product;
- (C) Communicate to or exchange with any other person selling any bakery product any actual or proposed price, price change, discount, or other term or condition of sale at or upon which any bakery product is to be, or has been, sold to any third person prior to the communication of such information to the public or trade generally (except in the course of negotiating for, entering into, maintaining, or carrying out bona fide purchase or sale transactions, subject to the prohibitions of Section IV(A) and (B) above).

V

[Information— Trade Associations]

Each defendant is enjoined and restrained, directly or indirectly:

- (A) For a period of ten (10) years from communicating to any other person selling any bakery product, any actual or proposed price, price change, discount, or other term or condition of sale at or upon which any bakery product is to be sold by the defendant, or such other person to any third person, prior to the communication of such information to the public or trade generally;

(B) Subparagraph (A) hereof shall not apply to the communication of such information in the course of negotiating for, entering into, maintaining or carrying out bona fide purchase or sale transactions, subject to the prohibitions of Section IV above;

(C) Joining, participating in, or belonging to any trade association, organization, or other group with knowledge that any of the activities thereof are inconsistent with any term of this Final Judgment.

VI

[Certificate of Noncollusion— Independent Prices]

Each defendant is ordered and directed:

(A) For a period of five (5) years from and after the date of entry of this Final Judgment to furnish simultaneously with each bid or quotation required to be sealed which is submitted by it for the sale of any bakery product in the Akron-Canton-Cleveland-Mansfield market, a certification, in substantially the form set forth in the Appendix hereto, by an official of such defendant knowledgeable about and having authority to determine the price or prices bid or quoted, that said bid or quotation was not the result, directly or indirectly, of any agreement, understanding, plan or program between such defendant and any other person selling any bakery product. Provided, however, that such certification would not be violated solely because the defendant has negotiated for, entered into, maintained, or carried out bona fide purchase or sale transactions with any other person, with respect to said bid or quotation, whereby the defendant would purchase bakery products from or supply bakery products to such person or whereby the defendant would submit a joint bid or quotation with such other person.

(B) Within thirty (30) days after the date of entry of this Final Judgment, independently and individually, to review and determine its prices, discounts, terms and conditions for the sale of each bakery product in the Akron-Canton-Cleveland-Mansfield market based upon lawful considerations, unless such review and determination shall have been made voluntarily within six (6) months prior to the entry of this Final Judgment; and within forty-five (45) days after the date of entry of this Final Judgment, to file with this Court and serve upon the plaintiff an Affidavit as to the fact and manner of compliance with this Section VI(B) including a statement setting forth the method used to review and determine such prices, discounts, terms and conditions for sale of each such bakery product.

(C) Within ninety (90) days after the date of entry of this Final Judgment, to furnish a copy thereof to each of its officers and directors and to each of its plant managers, and to file with this Court and serve upon the plaintiff an affidavit as to the fact and manner of its compliance with this Section (C).

VII

[Fair Trade]

Nothing in this Final Judgment shall be deemed to prohibit the lawful exercise by any defendant of such legal rights, if any, which a defendant may have under the Miller-Tydings Act, 50 Stat. 693 (1937), and the McGuire Act, 66 Stat. 632 (1952).

VIII

[Contempt— Government Election]

If the plaintiff should institute contempt proceedings against defendants American Bakeries Company; Continental Baking Company or Ward Foods, Inc., with respect to a set of facts which it believes to constitute a violation of the terms of both this Final Judgment and a Final Judgment of any other court, then the plaintiff shall elect the court in which it shall institute such contempt action and, upon such election, shall not institute another contempt action based upon substantially the same set of facts in any other court.

IX

[Inspection and Compliance]

For the purpose of determining or securing the compliance with this Final Judgment and for no other purpose, and subject to any legally recognized privilege, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to a defendant, made through its principal office:

(A) Duly authorized representative of the Department of Justice shall be permitted:

(1) Access during reasonable office hours to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the *possession* or under the control of the defendant, who may have counsel present, relating to any of the subject matters contained in this Final Judgment;

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

(B) Defendant shall submit such reports in writing, under oath if so requested, to the Department of Justice 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 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 plaintiff, except in the course of legal proceedings to which the United States of America is a party for the purpose of determining or securing compliance with this Final Judgment or as otherwise required by law.

X

[Jurisdiction Retained]

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 or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

Appendix

The undersigned hereby certifies that, to his best knowledge and belief, the annexed bid has not been prepared in collusion with any other producer or seller of bakery products and that the prices, discounts, terms and conditions thereof have not been communicated by or on behalf of the bidder to any such person other than the recipient of such bid and will not be communicated to any such person prior to the official opening of said bid. This certification may be treated for all purposes as if it were a sworn statement made under oath, and is made subject to the provisions of 18 U. S. C. 1001 relating to the making of false statements.