

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Independent Towel Supply Co., Morgan Linen Service, Inc., Pioneer Linen Supply Co., Union Towel Supply & Laundry Co. and The Cleveland Linen and Towel Service Institute, Inc., U.S. District Court, N.D. Ohio, 1970 Trade Cases ¶73,281, (Sept. 23, 1970)

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United States v. Independent Towel Supply Co., Morgan Linen Service, Inc., Pioneer Linen Supply Co., Union Towel Supply & Laundry Co. and The Cleveland Linen and Towel Service Institute, Inc.

1970 Trade Cases ¶73,281. U.S. District Court, N.D. Ohio, Eastern Division. Civil Action No. 68-935. Filed July 29, 1970. Entered September 23, 1970. "(Judge Battisti suspended subsections VI(B) and (C) until terms of treble damage action are complete.)" Case No. 2031 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Linen Supplies—Dissolution of Trade Association—Consent Decree.—Under the terms of a consent decree, a linen supply association was required to dissolve itself, and its four member companies were prohibited from stabilizing prices or allocating markets and customers. The companies also were barred from communicating to or exchanging with any other linen supplier any price or term or condition of furnishing linen supply service prior to communication of such information to the public or trade generally, or any lists of names or locations of linen supply customers. Prior to dissolution, the association was required to destroy its existing file of price lists, customer registrations and all books and records relating to arbitration of disputes over customers.

For the plaintiff: Richard W. McLaren, Asst. Atty. Gen., Baddia J. Rashid, William D. Kilgore, Carl L. Steinhouse, Frank B. Moore, Joseph J. Calvert, Robert S. Zuckerman and John L. Wilson, Attys., Dept. of Justice.

For the defendants: David L. Foster, Cleveland, Ohio.

Final Judgment

BATTISTI, D. J.: Plaintiff, United States of America, having filed its complaint herein on December 11, 1968, and plaintiff and defendants, Independent Towel Supply Company, Morgan Linen Service, Inc., Pioneer Linen Supply Company, Union Towel Supply & Laundry Company and The Cleveland Linen and Towel Service Institute, Inc. either personally or by their respective attorneys, having respectively consented to the entry of this Final Judgment pursuant to a stipulation entered into....., 1970 without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence against or admission by any party 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 hereto, it is hereby,

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter hereof and of the parties consenting hereto. The complaint herein states claims against defendants, Independent Towel Supply Company, Morgan Linen Service, Inc., Pioneer Linen Supply Company, Union Towel Supply & Laundry Company and The Cleveland Linen and Towel Service Institute, Inc., 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, 15 U. S. C. § 1, as amended.

II

[*Definitions*]

As used in this Final Judgment:

(A) "Defendants" shall mean Independent Towel Supply Company, Morgan Linen Service, Inc., Pioneer Linen Supply Company, Union Towel Supply & Laundry Company and The Cleveland Linen and Towel Service Institute, Inc., or each of them;

(B) "Person" shall mean any individual, corporation, partnership, firm, association or other business or legal entity;

(C) "Linen Supply" or "Linen Supplies" shall mean any linen or other washable cloth products such as towels, toweling, aprons, coats, dresses, frocks, smocks, gowns, hair cloths, headbands, jackets, blouses, sheets, pillowcases, shirts, slips, vests, tablecloths, napkins, uniforms, trousers, jumpers, caps, coveralls, and overalls used in the course of their employment by personnel of professional, commercial, industrial or governmental customers of a linen supply service company, or used by patrons of such customers;

(D) "Linen Supply Service" shall mean the furnishing and delivery of clean Linen Supplies, the pick-up of soiled Linen Supplies, the laundering of soiled Linen Supplies and the redelivery of clean Linen Supplies by the operator of such a service to customers thereof at stipulated intervals of time for a price paid by the respective customers;

(E) "Subsidiary" shall mean any Person, engaged in a Linen Supply Service business owned or controlled by a Defendant or any such Person under common control and management with a Defendant;

(F) "Cleveland Area" shall mean Cleveland, Ohio, all of Cuyahoga County, and the adjoining suburbs which are west of Ashtabula, north of Cuyahoga Falls and east of Lorain, all in the State of Ohio;

(G) "Linen Supplier" shall mean any Person engaged in the Linen Supply Service business; and

(H) "The Association" shall mean The Cleveland Linen and Towel Service Institute, Inc.

III

[*Applicability*]

The provisions of this Final Judgment applicable to any Defendant shall also apply to each of its officers, directors, agents, employees, Subsidiaries, successors and assigns, and to all persons in active concert or participation with any such Defendant who receive actual notice of this Final Judgment by personal service or otherwise. For purposes of this Final Judgment, each Defendant and its parents, officers, directors, employees, Subsidiaries, successors and assigns shall be deemed to be one person when acting in such capacity; provided, however, that if the plaintiff should institute contempt proceedings against Defendant Morgan Linen Service, Inc., its officers, directors, agents, employees, parent or Subsidiaries 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.

IV

[*Prices, Markets, Customers*]

The Defendants are each enjoined and restrained from directly or indirectly entering into, adhering to, enforcing, or claiming any rights under any agreement, understanding, plan or program with any other Linen Supplier or with any central agency or association of or for Linen Suppliers to:

(A) Establish, maintain, stabilize or adhere to prices, discounts or other terms or conditions for the furnishing of Linen Supply Service to customers;

(B) Divide or allocate market, territories or customers for the furnishing of Linen Supply Service; or

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(C) Refrain from soliciting any customers of another Linen Supplier.

V

[*Communication of Information*]

Defendants are each enjoined from:

(A) Joining, participating in, or belonging to any trade association with knowledge that any of the activities of such association are inconsistent with any term of this Final Judgment;

(B) Communicating to or exchanging with any other Linen Supplier any price, discount, term or condition of furnishing Linen Supply Service to be charged or granted by the Defendant or by such other Linen Supplier to any third Person prior to the communication of such price, discount, term or condition to the public or trade generally;

(C) Communicating to or exchanging with any other Linen Supplier lists of names or locations of Linen Supply Service customers;

(D) Reporting to any other Linen Supplier individually or to any association, group or central agency of or for Linen Suppliers, formal or informal, the acquisition or loss of Linen Supply Service customers;

(E) Formulating, communicating or maintaining a policy of not soliciting Linen Supply Service customers being supplied by another Linen Supplier; provided, however, that nothing herein shall be construed to require any Defendant to interfere tortiously in a legally recognizable contractual relationship between another Linen Supplier and its customer; and

(F) For ten (10) years from the date of entry of this Final Judgment, submitting to or participating in grievance procedures conducted by any association, group or central agency of or for Linen Suppliers, formal or informal, relating to the acquisition or loss of Linen Supply Service customers in the State of Ohio; provided, however, that nothing herein shall be construed to prohibit any Defendant from participating in lawful arbitration of bona fide disputes (which may include, but need not be limited to, arbitration of such disputes arising out of claims for alleged inducement of breach of contracts for Linen Supply Service) upon the following terms and conditions;

(1) Notice of each such arbitration (including the identity of the arbitrator) shall be given to the Attorney General, the Assistant Attorney General in charge of the Antitrust Division or the Chief of the Great Lakes Field Office of such Division ten (10) days prior to the commencement of the arbitration hearing and notice of the completion of such hearing shall be given in the same manner within ten (10) days thereafter;

(2) A duly authorized representative of the Department of Justice may attend such hearing;

(3) A stenographic transcript of such hearing shall be prepared by a court reporter in the normal manner of court hearings and depositions in civil cases; and

(4) A copy of such transcript shall be kept in the files of a Defendant participating in such arbitration for a period of one (1) year from the conclusion of such hearing, and shall be available for the inspection of duly authorized representatives of the Department of Justice pursuant to the provisions of section IX hereof.

Provided, however, that nothing contained in this Section V shall be deemed to be applicable to any Subsidiary of Defendant Morgan Linen Service, Inc. other than those corporations directly owned or controlled by it.

VI

[*Dissolution of Association—Document Destruction*]

(A) The Defendants and *each of them* are ordered and directed, within sixty (60) days after the entry of this Final Judgment, to institute and to prosecute with due diligence appropriate proceedings to wind up the affairs of and to terminate the existence of the Defendant Association; provided, however, that subject to the other provisions of this Final Judgment, nothing contained in this section VI shall prohibit the Defendants, or any of them, from organizing or joining any lawful association.

(B) The Defendant Association is ordered and directed within sixty (60) days after the entry of this Final Judgment, to destroy any existing file of price lists, customer registrations, complaints, investigations, awards, and any other existing books and records which refer to the arbitration of disputes over customers for furnishing Linen Supply Service and to file with this Court (with a copy to the Assistant Attorney General in charge of the Antitrust Division) an affidavit of such destruction.

(C) Each of the Defendants except Defendant Association is ordered and directed, within sixty (60) days after the entry of this Final Judgment, to destroy any existing books and records of price lists, customer registrations, complaints, investigations, awards and arbitration disputes, any of which refer or relate to the activities of the Defendant Association.

VII

[*Awarded Bids*]

For a period of three (3) years from and after the date of entry of this Final Judgment, when any Defendant has received a bid award from any federal, state or municipal government or agency thereof in the State of Ohio as a result of the fact that said Defendant was the only bidder, such Defendant is enjoined from submitting a bid to that government agency on the occasion of the next bid invitation thereof, where the invitation pursuant to which such Defendant received the award:

(A) Related to a dollar volume of business less than twenty-five hundred dollars (\$2,500) per year; or

(B) Specified that certain components of the Linen Supply Service which was the subject of such invitation might be bid upon in addition to or in lieu of the whole thereof and such Defendant submitted a bid as to the whole but refused to submit any bid as to less than the whole thereof.

VIII

[*Statements of Submitted Bids*]

Defendants, excluding Defendant Association are each directed and ordered for a period of three (3) years after the date of entry of this Final Judgment to prepare quarterly, a certified statement in which they shall list each bid for Linen Supply Service submitted by them to any federal, state or municipal government or any agency thereof on the Cleveland Area during the past quarter. The certified statement shall also identify the instances in which the Defendant has received an invitation to submit a bid to any federal, state or municipal government or any agency thereof in the Cleveland Area and did not submit a bid, together with an explanation of its reasons for not submitting a bid. The foregoing statement together with the work papers used in the preparation of such bids, shall be kept in the files of each of the Defendants preparing same for a period of four (4) years from the date of entry of this Final Judgment.

IX

[*Compliance and Inspection*]

For the purpose of determining or securing the compliance with this Final Judgment and for no other purpose, the subject to any legally recognizable 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 representatives of the Department of Justice shall be permitted:

(1) Access during regular office hours to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of any Defendant, which may have counsel present, relating to any of the subject 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, employees or agents of Defendant, who may have counsel present, regarding any such matters; and

(B) Defendants 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

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