

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The First National Bank of Saint Paul; First Grand Avenue State Bank of Saint Paul; First Security State Bank of Saint Paul; First Merchants State Bank of Saint Paul; First State Bank of Saint Paul; First Bank Stock Corporation; Northwestern National Bank of St. Paul; and Commercial State Bank in St. Paul., U.S. District Court, D. Minnesota, 1964 Trade Cases ¶71,021, (Mar. 24, 1964)

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United States v. The First National Bank of Saint Paul; First Grand Avenue State Bank of Saint Paul; First Security State Bank of Saint Paul; First Merchants State Bank of Saint Paul; First State Bank of Saint Paul; First Bank Stock Corporation; Northwestern National Bank of St. Paul; and Commercial State Bank in St. Paul.

1964 Trade Cases ¶71,021. U.S. District Court, D. Minnesota, Third Division. Civil No. 3-63 Civ. 37. Entered March 24, 1964. Case No. 1738 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Bank Service Charges and Interest Rates—Consent Judgment.— Banks were prohibited under the terms of a consent judgment from fixing uniform service charges or exchanging information as to costs of service charges.

For the Plaintiff: William H. Orrick, Jr., Assistant Attorney General, W. D. Kilgore, Jr., Donald F. Melchior, Samuel Flatow, John M. Toohey, and Charles A. Degnan, Attorneys, Department of Justice.

For the Defendants: Briggs & Morgan, St. Paul, Minnesota, by J. Neil Morton, for The First National Bank of Saint Paul, First Grand Avenue State Bank of Saint Paul, First Security State Bank of Saint Paul, First Merchants State Bank of Saint Paul, and First State Bank of Saint Paul; Dorsey, Owen, Marquart, Windhorst & West, Minneapolis, Minnesota, by John G. Dorsey, for First Bank Stock Corporation; Covington & Burling, Washington, D. C., by Hamilton Carothers, for Northwestern National Bank of St. Paul; Doherty, Rumble & Butler, St Paul, Minnesota, by R. J. Leonard, for Northwestern National Bank of St. Paul; Bowen, Bowen, Preus, Farrell & Adams, Minneapolis, Minnesota, by Robert E. Bowen, for Commercial State Bank in St. Paul; Levin & Levin, St. Paul, Minnesota, by Albert D. Levin, for Commercial State Bank in St. Paul.

Final Judgment

DEVITT, Judge [*In full text*]: The plaintiff, United States of America, having filed its complaint herein on February 11, 1963, and the defendants, by their respective attorneys, having severally consented to the entry of this Final Judgment without admission by any party with respect to, or trial or adjudication of, any issue of fact or law herein, and the Court having considered the matter and being duly advised,

Now, therefore, before the taking of any testimony and upon consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

[*Sherman Act*]

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states claims upon which relief may be granted against the defendants 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, partnership, firm, corporation, association, trustee or any other business or local entity other than any charitable or eleemosynary institution;
- (B) "Service charge" shall mean the fees, and charges of a commercial bank asserted against the checking account of any customer.

III

[*Applicability*]

The provisions of this Final Judgment applicable to any defendant shall apply also to its successors, assigns, officers, directors, agents and employees, to any person owning or controlling a majority of the stock of such defendant, and to all other persons in active concert or participation with such defendant who receive actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment only, transaction or communications solely between a registered bank holding company under the Bank Holding Company Act of 1956, or any servicing subsidiary of such bank holding company, and subsidiaries of such bank holding company recognized as such under such Act, shall be deemed to be transactions and communications not prohibited by this Final Judgment; provided, however, that the making and entry of this Final Judgment shall in no wise estop a later adjudication under any law of the legality or illegality of any such past or future transactions, or communications.

IV

[*Prohibited Practices*]

- (A) The consenting defendants are each enjoined and restrained from entering into, adhering to, participation in, maintaining or furthering any contract, combination, agreement, undertaking, by-law, plan or program with each other or any other commercial bank to eliminate, suppress or restrict competition for the account of any depositor with respect to any service charges.
- (B) Without limitation to subsection (A) above, the consenting defendants are each enjoined and restrained from entering into, adhering to, participating in, maintaining or furthering any contract, combination agreement, undertaking, by-law, plan or program with each other or any other commercial bank:
- (1) To fix, determine, maintain, establish, stabilize or make uniform any service charge for any other person;
 - (2) To exchange underlying cost or other underlying data relating to any service charge to be levied against any other person, except as permitted under Section V(A) below.

V

[*Exchange of Information, Record-Keeping*]

The consenting defendants are each enjoined and restrained from directly or indirectly:

- (A) Communicating to or exchanging with any bank (except any Federal Reserve Bank, any Federal lending agency or any bank when acting in a fiduciary capacity) clearing house, bank holding company or other organization of banks, any information as to service charges, except (1) with or after the release of such service charges to the public generally or pursuant to court process, or (2) as necessary to provide data processing services, including services contemplated by 12 U. S. C. §§ 1861–65, but if performed by a defendant, such defendant shall not use any of the data so obtained from another bank in any of its other banking operations;
- (B) Continuing to be a member of or participating in activities of any clearing house, association or other organization with knowledge that any of the official activities of such clearing house, association or other

organization are being carried on in a manner which, if the clearing house, association or other organization were a consenting defendant therein, would violate any provision of this Final Judgment;

(C) Maintaining or utilizing, after ninety (90) days from the date of entry of this Final Judgment, any schedule of service charges which is not independently arrived at by each such defendant on the basis of its individual cost figures and individual judgment as to profits and competitive factors;

(D) Refraining from maintaining for a period of five (5) years from the date of preparation the memoranda, work sheets and other underlying documents used by the defendant in determining what shall be the service charges of the defendant.

VI

[*Permissive Provisions*]

Nothing in this Final Judgment shall be deemed to prohibit any defendant from (a) seeking to procure the enactment, issuance, repeal, amendment or interpretation of any Federal or State law or regulation applicable to banks; or (b) complying with or doing anything authorized by any duly promulgated rule or regulation of any Federal agency or any Federal law or statute now or hereafter in force.

VII

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment, 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 said 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 and employees of such defendant, who may have counsel present, regarding any such matters.

Upon written request, the defendant shall submit reports in writing in respect to any such matters as may from time to time be reasonably necessary to the enforcement of this Final Judgment. No information obtained by the means provided in this Section VII 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 for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VIII

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the 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, for the modification of any provision thereof, for the enforcement of compliance therewith, and for punishment of violation thereof.