

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The Duluth Clearing House Association; First American National Bank of Duluth; Northern City National Bank of Duluth; Northwestern Bank of Commerce; and Duluth National Bank., U.S. District Court, D. Minnesota, 1964 Trade Cases ¶71,022, (Mar. 24, 1964)

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United States v. The Duluth Clearing House Association; First American National Bank of Duluth; Northern City National Bank of Duluth; Northwestern Bank of Commerce; and Duluth National Bank.

1964 Trade Cases ¶71,022. U.S. District Court, D. Minnesota, Fifth Division. Civil No. 5-63 Civ. 4. Entered March 24, 1964. Case No. 1739 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Bank Loans and Interest Rates—Consent Judgment.—Banks and a bank clearing house were prohibited under the terms of a consent judgment from fixing the interest rate paid to depositors, the terms or duration of installment loans, or service charges or to exchange information relating to them.

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

For the defendants: Palmer, Hood, Crassweller & McCarthy, Duluth, Minnesota, by Ray G. Palmer, for The Duluth Clearing House Association and First American National Bank of Duluth; Covington & Burling, Washington, D. C., by Hamilton Carothers, for First American National Bank of Duluth; Sullivan, McMillan, Hanft, & Hastings, Duluth, Minnesota, by William P. O'Brien, for Northern City National Bank of Duluth and Duluth National Bank; and Fryberger, Fryberger & Smith, Duluth, Minnesota, by H. B. Fryberger, for Northwestern Bank of Commerce.

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.

[*Definition*]

As used in this Final Judgment:

(A) "Duluth Clearing House" shall mean the defendant The Duluth Clearing House Association;

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

(C) "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 to its successors, assigns, officers, directors, agents, 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, transactions or communications

(a) 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; and

(b) solely between any person and any bank the majority of whose shares of stock are owned or otherwise controlled by such person

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, participating in, maintaining or furthering any contract, combination, agreement, understanding, by-law, plan or program with each other or any other commercial bank to eliminate, suppress or restrict competition in interest rates paid on deposits or installment loans on automobiles, or in 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, understanding, by-law, plan or program with any Commercial Bank or savings and loan or building and loan association:

(1) To fix, determine, maintain, establish, stabilize or make uniform any

(a) rate of interest on deposits made by any other person;

(b) rate of interest on or duration or other terms of any installment loans on automobiles, or mortgages, except where the defendant and such other commercial bank or savings and loan or building and loan association are actual parties to the negotiations for or the loan transactions resulting therefrom;

(c) service charges for any other person;

(2) To limit, restrict or prevent the advertising of interest or loan rates, service charges or other services rendered bank customers, or the media to be used for such advertising.

V.

[*Exchange of Information*]

The consenting defendants are 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 or other organization of banks any information as to (1) any service charges for any other person; (2) rate of interest on deposits made by any other person; or (3) transactions prohibited by subsection (B)(l)(b) of Section IV, except (1) with or after the release of such information 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 the activities of any association, clearing house or other organization with knowledge that any of the official activities of such association, clearing house or other organization are being carried on in a manner which, if the association, clearing house or other organization were a consenting defendant herein, would violate any of the provisions of Sections IV or V herein;

(C) Maintaining or utilizing, after ninety (90) days from the date of entry of this Final Judgment, any schedule of service charges, rates of interest on deposits, or rates of interest on or duration of new loans made after said ninety (90) days and covered by Section IV above, which are 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 said schedules used by the defendant.

VI.

[*Clearing House Activities*]

(A) Defendant Duluth Clearing House is enjoined from engaging in any activity except to effect the daily exchanges between active and participating members and the payment of the balances resulting from such exchanges except for activities relating to civic, charitable, educational or eleemosynary promotions.

(B) Defendant Duluth Clearing House shall serve upon each future active and participating member a copy of this Final Judgment and maintain a record of such service.

VII.

[*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.

VIII.

[*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 such 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 VIII shall be divulged by any representatives 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.

IX.

[*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.