

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. United Parcel Service of America, Inc., U.S. District Court, E.D. Pennsylvania, 1974-1 Trade Cases ¶74,985, (May 1, 1974)

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United States v. United Parcel Service of America, Inc.

1974-1 Trade Cases ¶74,985. U.S. District Court, E.D. Pennsylvania. Civil Action No. 73-1773. Entered May 1, 1974. Case No. 2332, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing—Customers and Territories—Inducing Governmental Action—Wholesale Parcel Delivery Service—Consent Decree.—A parcel delivery service was barred by a consent decree from: (1) except according to appropriate ICC or state regulatory authority, agreeing with any person engaged in the business of wholesale package delivery (or substitute service) on the price to be charged, the commodities to be carried, or the territories to be served by either of them in providing wholesale package delivery service; (2) agreeing with any other motor carrier so as to limit the freedom of either independently to file, amend, withdraw or protest any application with any regulatory agency; and (3) except according to appropriate regulatory authority, agreeing with any other motor carrier so as to restrict either from soliciting or rendering wholesale package delivery service to any customer, or for any commodity, or in any-area that either is authorized to serve.

For plaintiff: Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, Joseph J. Saunders, John J. Hughes, Joel Davidow, William J. Holloran, Raymond D. Cauley, Attys., Dept. of Justice, Antitrust Div., Philadelphia, Pa., Robert E. J. Curran, U. S. Atty. **For defendant:** Bernard G. Segal, Irving R. Segal and Robert L. Kendall, Jr., of Schnader, Harrison, Segal & Lewis, Philadelphia, Pa.

Final Judgment

HANNUM, D. J.: Plaintiff, United States of America, having filed its Complaint herein on August 3, 1973, and Plaintiff and Defendant, by their respective attorneys, having consented to the making and entry of this Final Judgment, without admission by either party in respect to any issue and without this Final Judgment's constituting evidence or an admission by either party hereto with respect to any such issue;

Now, Therefore, before any testimony has been taken herein, 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 over the subject matter of this action and of the parties hereto. The Complaint states claims upon which relief may be granted against the Defendant under Section 1 of the Act of Congress of July 2, 1890, as amended (15 U. S. C. §1), commonly known as the Sherman Act.

II.

[*Definitions*]

As used in this Final Judgment, the terms:

A. "Wholesale package delivery" shall mean the regularly scheduled pickup and delivery of small packages and parcels, usually under 50 pounds in weight and of limited dimensions, from wholesale to retail business establishments and between various business establishments, such as manufacturers, manufacturers' agents,

jobbers and commercial distributors, and their customers. Wholesale package delivery does not include the pickup and delivery of small packages and parcels from retail business establishments to their customers;

B. "Person" shall mean any individual, individual proprietorship, partnership, firm, corporation or any other legal entity.

III.

[*Applicability*]

The provisions of this Final Judgment applicable to the Defendant shall apply also to its subsidiaries, affiliates, successors and assigns; to its directors, officers, agents and employees; and to all persons in active concert or participation with it who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

[*Price; Certification Applications; Customers and Territories*]

The Defendant is enjoined and restrained from:

A. Except pursuant to appropriate Interstate Commerce Commission or State Public Utility regulatory authority, entering into any agreement or understanding with any person engaged in the business of wholesale package delivery or in the business of rendering any service that can be substituted therefor, as to the prices to be charged, the commodities to be carried, or the territories to be served by either of them in providing wholesale package delivery service.

B. Entering into any agreement or under standing, with any other motor carrier, that limits the freedom of Defendant or that carrier independently to file an application, or to amend, withdraw or protest any application filed, with respect to wholesale pack age delivery, with any state regulatory commission or with the Interstate Commerce Commission after entry into such agreement or understanding; and

C. Except pursuant to appropriate Interstate Commerce Commission or State Public Utility regulatory authority, entering into any agreement or understanding with any other motor carrier that restricts Defendant or that carrier from soliciting or rendering wholesale package delivery service to any customer, or for any commodity, or in any area that Defendant or that carrier, respectively, is authorized by law to serve.

V.

[*Inspection and Compliance*]

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, subject to any legally recognized privilege:

A. Any duly authorized representative or representatives of the Department of Justice, upon written request by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendant, made to its principal office shall be permitted, subject to the reasonable convenience of Defendant and without restraint or interference from it and subject to the presence of Defendant's counsel if desired by Defendant:

1. Access during the office hours of Defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession, custody or control of the Defendant relating to any matters contained in this Final Judgment; and

2. To interview directors, officers or employees of Defendant concerning any such matters, which persons may, if they wish, have counsel of their choosing present.

B. Upon such written request, Defendant shall submit such reports in writing with respect to any of the matters contained in this Final Judgment as may be requested from time to time.

Any information obtained by the means provided for in this Section V shall not 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 Plaintiff is a party, for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VI.

[*Retention of Jurisdiction*]

Jurisdiction is retained for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders, interpretations and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions thereof, for the enforcement of compliance therewith and for the punishment of violations thereof.

VII.

[*Reports*]

For a period of ten years from the date of entry of this Final Judgment, Defendant is ordered to furnish Plaintiff, on each anniversary of that entry, a report of the steps that Defendant has taken during the preceding year to advise its appropriate officers, directors and employees of its and their obligations under this Final Judgment.