

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Freightways et al., U.S. District Court, N.D. California, 1940-1943 Trade Cases ¶56,273, (Apr. 14, 1943)

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United States v. Freightways et al.

1940-1943 Trade Cases ¶56,273. U.S. District Court, N.D. California, Southern Division. Civil Action No. 22075-R. April 14, 1943.

In a consent decree entered in proceedings under the anti-trust laws, dissolution of Freightways is ordered, and defendants are enjoined from adopting any agreement or plan for the division or allocation of territory among themselves for the purpose of soliciting freight; from dividing the United States into zones; from providing exclusive routings over the lines of the defendants and their connecting carriers; from issuing any routing or other guides for the use of agents, shippers, carriers or others which set up on a point-to-point basis exclusive routings of shipments transported over the lines of the defendant carriers or their connecting carriers; from exchanging freight exclusively among themselves or exclusively with other motor carriers; from agreeing not to exchange freight with or accept freight from other motor carriers in competition with themselves; from pooling or arbitrarily dividing freight at any common terminal or elsewhere; from soliciting freight in a common name; from canceling through routes and through rates with other carriers; from using the name "Freightways" in their corporate title on rolling stock and routing of traffic, or in any manner whatsoever; and from fixing, discussing or determining rates, charges, fares, rules and practices except for the purpose of establishing through routes or joint rates.

Decree entered by Michael J. Roche, United States District Judge.

Decree

This case having come on to be heard before the Honorable Michael J. Roche, United States District Judge, United States of America, appearing by Tom C. Clark, Assistant Attorney General; Arne C. Wiprud, William R. Kueffner and Pierce W. Bradley, Special Assistants to the Attorney General; Robert J. Rubin and George W. Hippeli, Special Attorneys; and Frank J. Hennessy, United States Attorney; and the answering defendants appearing by DeLancey C. Smith, Francis R. Kirkham, Charles F. Prael, and Donald R. Schafer, their attorneys, and the Court having heard and duly considered the pleadings and statements of counsel for the respective parties, and the plaintiff having presented its case, and the defendants having submitted their case, and consented to the entry of this decree before any testimony was taken on behalf of defendants; and it appearing to the satisfaction of the Court that the plaintiff is entitled to the relief hereinafter granted and adjudged, it is, therefore, hereby ordered, adjudged and decreed as follows:

I

[*Jurisdiction and Cause of Action*]

The Court has jurisdiction of the parties hereto; and for the purposes of this decree and proceeding for the enforcement thereof, the Court has jurisdiction of the subject hereof and the complaint states a cause of action against the said defendant under the Act of Congress of July 2, 1890 entitled, "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," known as the Sherman Antitrust Act.

II

[*Combination and Conspiracy Unlawful*]

The combination and the conspiracy between defendant Freightways and defendant motor carriers constitutes a combination and conspiracy to monopolize, and an unreasonable and unlawful restraint of trade and commerce among the several states and with foreign countries in violation of Sections 1 and 2 of the Sherman Antitrust Act.

III

[*Prohibited Acts Enjoined*]

Each individual defendant, and each corporate defendant, its successors, officers, directors, agents and employees and all persons and corporations acting under, through or for it, hereby is and are enjoined from doing the acts prohibited by this decree and is and are directed to do the acts hereby required.

IV

[*Dissolution*]

It is further ordered, adjudged and decreed, that the defendant Freightways shall be and is hereby forever dissolved and the defendants, and each of them, their officers and agents, are hereby ordered to dissolve and liquidate said defendant Freightways and divest themselves of any and all interest therein.

V

[*Membership in Similar Organization*]

The defendants, and each of them, their officers and agents, are perpetually enjoined and restrained from organizing, participating in, or becoming members of any association or corporation which carries on directly or indirectly such activities of Freightways as are prohibited by this decree.

VI

[*Allocation of Areas or Routings*]

Any two or more of the defendants, their officers and agents, are hereby perpetually enjoined and restrained from making, adopting, promulgating or making use of any agreement, resolution, plan or device for dividing and allocating among defendants, or any of them, geographical areas from which and to which freight would be solicited, carried, and/or delivered, or dividing the United States into zones, or providing exclusive routing or routings via the lines of defendants, or any of them, and their connecting carriers, for each traffic movement originating in or destined to said zones on the one hand and from or to points within the territory served by defendant motor carriers, or any of them, on the other hand, or between points in the territory served by the defendants, or any of them.

VII

[*Publication of Routing Guides*]

Any two or more defendants, their officers and agents, are hereby perpetually enjoined and restrained from using preparing, publishing, or issuing any routing or other guides for the use of agents, shippers, carriers, or others, setting up on a point to point basis exclusive routings to be given shipments transported by or for movement over the lines of defendant motor carriers, or any of them, and their connecting carriers.

VIII

[*Agreements for Exclusive Exchange of Freight or Elimination of Competition*]

The defendants, and each of them, their officers and agents, are perpetually enjoined and restrained from agreeing to exchange or from exchanging freight exclusively among themselves or exclusively with other motor carriers, or from agreeing to eliminate competition among themselves, or any of them, or with other carriers, in violation of the Sherman Antitrust Act.

IX

[Agreements Not to Exchange Freight with Competitors]

The defendants, and each of them, their officers and agents, are hereby perpetually enjoined and restrained from agreeing not to exchange freight with or accept freight from other motor carriers which are in competition with defendant motor carriers, or any of them.

X

[Pooling or Dividing Freight]

Defendants, and each of them, their officers, agents and employees are enjoined and restrained from pooling or arbitrarily dividing freight at any common terminal or elsewhere.

XI

[Violation of Shipper's Routing Directions]

Defendants, and each of them, their officers, agents and employees are enjoined and restrained from the transportation of freight otherwise than in accordance with routing of same by the shipper, carrier or consignee, except where same has not been routed by shipper, carrier or consignee, and except in cases of emergency such as riot, flood, accident, disaster or other act of God.

XII

[Solicitation of Freight in Common Name]

Any two or more defendants, their officers and agents, are enjoined and restrained from the solicitation of freight in a common name; and from using any shipping documents which show the name thereon of any carrier other than the originating or participating carrier.

XIII

[Cancellation of Through Routes and Joint Rates]

The defendants, and each of them, their officers and agents, are perpetually enjoined and restrained from cancelling through routes and joint rates with other carriers, or otherwise restricting their tariffs, by concert of action among themselves or among any two or more of them.

XIV

[Restricting Right to Dispose of Assets]

The defendants, and each of them, their officers and agents, are perpetually enjoined and restrained from agreeing among themselves that none of said defendants will sell, or otherwise dispose of their assets or good will, or any part thereof, without first offering same to any of the defendants herein, or in any other manner restricting the right of any of the defendants to dispose of their said assets and good will in any manner they desire.

XV

[Use of Name "Freightways"]

The defendants, and each of them, their officers and agents, are perpetually enjoined and restrained from using only the name, "Freightways" in their corporate title, on rolling stock and routing of traffic, or in any manner whatsoever.

XVI

[*Agreements upon Rates and Practices*]

The defendants, and each of them; their officers and agents, are perpetually enjoined and restrained from agreeing among themselves to fix, discuss, or in any manner, determine rates, charges, fares, and rules and practices in connection therewith, other than the agreeing by two or more connecting carriers on the establishment of through routes and joint rates and on the division among or between themselves of revenue derived from interline freight moving via their lines on joint rates published or concurred in by the defendants and other carriers participating in such movement.

XVII

[*Opening of Gateways to All Motor Carriers*]

The defendants, and each of them, their officers and agents, shall take all necessary and proper steps to accomplish the opening to all motor carriers of all gateways heretofore closed pursuant to agreement of the defendants, or any of them, and the removal of any tariff restrictions made pursuant to agreement of the defendants, or any of them, to effectuate the closing of such gateways.

XVIII

[*Time Within Which Decree to Be Effectuated*]

All of the provisions of this decree are effectuated on the 31st day of January 1944.*

*[Paragraph XVIII, originally setting the effective date as 180 days from the date of the decree, was amended to read as above January 31, 1944.]

XIX

[*Appointment of Receiver*]

Upon the failure of said defendants, or any of them, to comply with the provisions of this decree, including the liquidation and dissolution of defendant Freightways, within the time specified in this decree, the Court may appoint a receiver to effectuate the provisions of this decree after motion and order for that purpose.

XX

[*Costs of Suit*]

The plaintiff shall recover from the defendants the costs of this suit to be duly taxed herein.

XXI

[*Access to Records, Interviews and Reports*]

For the purpose of securing compliance with this decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on the written request of the Attorney General or an Assistant Attorney General and on reasonable notice to defendant motor carriers, made to the principal office of said defendants, be permitted (a) reasonable access, during the office hours of said defendants, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendants, relating to any of the matters contained in this decree; (b) subject to the reasonable convenience of said defendants and without restraint or interference from it, and subject to any legally recognized privilege, to interview officers or employees of said defendants, who may have counsel present, regarding any such matters; and said defendants, on such request, shall submit such reports in respect of any such matters as may from time to time be reasonably necessary for the proper enforcement of this decree; provided, however, that information obtained by the means permitted in this paragraph shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized

representative of the Department of Justice, except in the course of legal proceedings in which the United States is a party or as otherwise required by law.

XXII

[*Jurisdiction Retained*]

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this decree to make application to the Court any time before or after the effective date hereof for such further orders and directions as may be necessary or appropriate in relation to the construction of or carrying out of this decree, for the modification hereof upon any ground for the enforcement of compliance herewith and the punishment of violations hereof.