

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Pacific Greyhound Lines, et al., U.S. District Court, N.D. California, 1946-1947 Trade Cases ¶57,619, (Sept. 25, 1947)

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United States v. Pacific Greyhound Lines, et al.

1946-1947 Trade Cases ¶57,619. U.S. District Court, N.D. California. Civil Action No. 25267-S. September 25, 1947.

A consent judgment, entered in an action charging that defendants had imposed monopolistic restraints upon bus transportation between certain West Coast cities, requires the sale of the operating rights of a bus line maintained by a defendant as a “fighting ship.” Agreements to fix passenger fares, other than agreements establishing joint fares over through routes, are prohibited. Certain guaranteed-earnings agreements between a defendant railroad and a defendant motor bus company are terminated, and the railroad is required, in entering into such agreements, to give priority to competitors of the bus company. The railroad is prohibited from participating in the management and operation of the bus company.

For plaintiff: Tom C. Clark, Attorney General; John F. Sonnett, Assistant Attorney General; James E. Kilday, William C. Dixon, Wallace Howland, Special Assistants to the Attorney General; Frank J. Hennessy, United States Attorney; Lawrence W. Somerville, Special Attorney.

For defendants: Maurice E. Harrison, James S. Moore, Jr., Brobeck, Phleger & Harrison, for Pacific Greyhound Lines, Dollar Lines; Robert Driscoll, Maurice E. Harrison, Brobeck, Phleger & Harrison, for The Greyhound Corporation; T. W. Bockes, E. B. Collins, W. R. Rause, E. E. Bennett, E. C. Renwick, for Interstate Transit Lines, Interstate Transit Lines, Inc., Union Pacific Stages, Incorporated; Robert L. Pierce, E. J. Foulds, for Southern Pacific Company.

FINAL JUDGMENT

[*Consent Judgment*]

Plaintiff, the United States of America, having filed its complaint herein on the 24th day of October 1945; and the defendants having appeared and severally filed their answers to such complaint, denying the substantive allegations thereof; and the plaintiff by leave of court and with consent of the defendants having filed its amended complaint herein on the 22nd day of September 1947; and the parties hereto having stipulated with the approval of the court that the answers heretofore filed in response to the original complaint shall be deemed and taken to be as answers to such amended complaint; all the parties hereto by their respective attorneys herein having severally consented to the entry of this final judgment herein without trial or adjudication of any issue of fact or law herein, and without admission herein by any party in respect to any such issue;

NOW, THEREFORE before any testimony has been taken herein, and without trial or adjudications of any issue of fact or law herein, and upon consent of all parties hereto, it is hereby

ORDERED, ADJUDGED and DECREED as follows:

[*Court Has Jurisdiction*]

I.

The Court has jurisdiction of the subject matter herein, and of all the parties to this judgment, and the amended complaint states a cause of action against the defendants, and each of them, under sections 1 and 2 of the Act of Congress of July 2, 1890, entitled “An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies,” as amended, commonly known as the Sherman Act (15. USC secs. 1, 2).

[*Definitions*]

II.

As used herein:

- (a) "Overland" means, individually and jointly, the defendants Interstate Transit Lines, Interstate Transit Lines, Inc., and Union Pacific Stages, Incorporated;
- (b) "Joint fare" means a single fare applicable to the interstate transportation of passengers by two or more motor or rail carriers from the place of origin to the place of destination;
- (c) "Through route" means a combination of the routes of two or more connecting carriers, motor or rail, arising through joint agreement, facilitating the interchange of interstate passengers and their baggage from the line of one connecting carrier to that of another, for the movement of traffic from the place of origin to the place of destination;
- (d) "Interchange" means the transfer of Passengers and their baggage from the line of one connecting carrier to that of another for the purpose of continuing the journey toward the ultimate destination.

[*Applicability of Provisions*]

III.

The provisions of this judgment applicable to any defendant shall apply to each of its subsidiaries, successors, assignees and nominees, and to each of its officers, directors, agents and employees, and to each person acting or claiming to act under, through or for them, or any of them.

[*Agreements to Fix Fares Enjoined*]

IV.

Each of the defendants Pacific Greyhound Lines, Dollar Lines and Southern Pacific Company, is hereby enjoined and restrained from entering into or performing any agreement or understanding by and between themselves or any of them, directly or indirectly, to fix, establish or maintain passenger fares, other than agreements by and between the said defendants or any of them establishing through routes, joint fares over the routes of the participating carriers handling such interline traffic, or optional honoring of tickets, and for fixing the division of revenue with respect to any such traffic.

[*Contracts on Restrictive Conditions Enjoined*]

V.

Each of the defendants Pacific Greyhound Lines, Interstate Transit Lines, Interstate Transit Lines, Inc., and Union Pacific Stages, Incorporated, is hereby enjoined and restrained from continuing in effect, entering into, performing or enforcing any provision in any contract

(a) between Pacific Greyhound Lines on the one hand and the Overland group or any of them on the other hand, or

(b) between any of said defendants and a feeder line motor carrier using a depot of any of said defendants at any point in California or Oregon whereby any feeder line is required as a condition to the enjoyment of joint fares, through routes, or joint terminal privileges with said defendants, or any of them, to agree not to enter into joint fares or through routes with competitors of said defendants or to refuse to interchange through passengers at the terminals of competitors of defendants. Each of said defendants is directed to take such steps as are necessary to eliminate such restrictions from existing contracts, if any, with any such feeder line containing the same, and shall notify all feeder lines who are now parties to such contracts of the removal of such restrictions. Each of said defendants shall submit to this Court a report in detail of such steps as have been taken in compliance with the terms of this section within six months of the date of the filing of this judgment

and shall furnish a copy thereof to the Assistant Attorney General of the United States in charge of the Antitrust Division.

[*Agreements to Restrain Competition Prohibited*]

VI.

Each of the defendants Pacific Greyhound Lines (hereinafter referred to as Pacific), and Interstate Transit Lines, Interstate Transit Lines, Inc., and Union Pacific Stages, Incorporated (herein collectively described as Overland), is hereby enjoined and restrained from continuing in effect, entering into, performing or enforcing any agreement or understanding between Pacific and Overland whereby:—

- (a) Pacific agrees not to establish through routes or joint fares with any competitor of Overland;
- (b) Overland agrees not to establish through routes or joint fares with any competitor of Pacific;
- (c) Pacific agrees to cancel any through route or joint fare now in effect with any competitor of Overland;
- (d) Overland agrees to cancel any through route or joint fare now in effect with any competitor of Pacific;
- (e) Pacific agrees to cancel any through route or joint fare now in effect with any feeder line;
- (f) Overland agrees to cancel any through route or joint fare now in effect with any feeder line;
- (g) Pacific agrees to refuse to route passengers originating on its line and destined to a point on Overland or any connection of Overland over the lines of a motor bus competitor to Overland with whom Pacific maintains through routes and joint fares;
- (h) Overland agrees to refuse to route passengers originating on its line and destined to a point on Pacific or any connection of Pacific over the lines of a motor bus competitor of Pacific with Whom Overland maintains through routes and joint fares.

[*Defendants Directed to Eliminate Restraints; Report of Compliance*]

VII.

Each of the defendants referred to in section VI herein is directed to take such steps as are necessary to eliminate the restraints referred to therein from existing contracts and agreements, if any, containing the same. Within six months from the date of the entry of this judgment, each of such defendants shall submit to this Court a report in detail of such steps as they have taken in compliance with the terms of this section, and shall furnish a copy thereof to the Assistant Attorney General of the United States in charge of the Antitrust Division.

[*Divestiture of Operating Rights Ordered*]

VIII.

Defendant Dollar Lines is hereby directed to divest itself completely of all of its rights to operate motor bus service under certificates of public convenience and necessity held by it or under pending application therefor (hereinafter collectively referred to as operating rights) by effecting the sale of said operating rights to a purchaser or purchasers that shall have no corporate or other relationship, direct or indirect, by security ownership, management control or otherwise, with any of the defendants named in the amended complaint herein, or with any person affiliated therewith.

Advertisements for bids for the purchase of Dollar Lines' operating rights, in a form approved by the Assistant Attorney General of the United States in charge of the Antitrust Division, shall be made twice weekly for a period of four weeks in a daily newspaper of general circulation in the cities of San Francisco and Los Angeles, California, and Portland, Oregon, and in each issue of the periodical known as "Traffic World." Such advertisements shall contain adequate information as to all assets of Dollar Lines used or useful in the transportation of passengers (including but not limited to operating rights, interests in buses, and depot rights, if any) and as to the interests of other parties which may have an interest in such assets.

Prospective purchasers shall submit bids for purchase of the operating rights of Dollar Lines. Dollar Lines shall immediately report to the Assistant Attorney General of the United States in charge of the Antitrust Division all bids and proposals received by it pursuant to said public offer. Within ten days after the date specified for the closing of bids in said advertisements, Dollar Lines shall submit to the Court the bids and proposals received and shall at that time petition the Court for permission to sell its operating rights to the highest bidder therefor.

If, after a hearing on the said petition at which all of the interested parties shall have an opportunity to be heard, the Court determines that acceptance of the highest bid for the said operating rights will not bring about substantial competition in the transportation of passengers over the route or routes involved, it shall award the said operating rights to the next highest bidder deemed by it qualified to bring about such substantial competition, subject to the approval of such transfer by the Interstate Commerce Commission and the Public Utilities Commissioner of the State of Oregon.

Any party submitting a proposal to purchase the said operating rights of Dollar Lines shall have the option and privilege at the time of submitting his bid to declare an intention to purchase all or any of those certain five GMC Model 843 buses, heretofore operated by Dollar Lines, and designated as R 130, R 131, R 132, R 133 and R 137, including tools and accessories carried thereon, owned by defendant Pacific Greyhound Lines. In the event that the successful bidder for the purchase of the operating rights of Dollar Lines as determined by the Court shall have declared such an intention to purchase the said buses and equipment pertaining thereto at the time of submitting his bid, said buses and accessories so specified by the approved purchaser as desired by him shall be conveyed to him for a price to be agreed upon by such parties as being the fair and reasonable market value thereof. In the event of failure on the part of such parties to agree on such reasonable price, the Court, after hearing the interested parties and the complainant herein, shall fix such reasonable price.

Pending determination by the Court of the successful bidder and the conveyance thereto of the said operating rights of Dollar Lines, Pacific Greyhound Lines and Dollar Lines shall take all steps necessary to preserve the operating rights of Dollar Lines, provided, however, that upon such conveyance being made such responsibility of said defendants herein shall cease.

Upon approval by the Court of a successful bidder, pursuant to the foregoing paragraphs the parties shall promptly file and diligently prosecute all requisite applications for the approval of the transfer of said operating rights by the Interstate Commerce Commission and the Public Utilities Commissioner of Oregon, and

1. The approved bidder shall deposit with the Clerk of the Court cash or a certified check payable to the order of Dollar Lines in the amount of the bid, to be delivered to Dollar Lines, or order, upon delivery to such purchaser of the conveyance of said operating rights, but to be returned to the bidder if such approval is denied;
2. Contemporaneously, Dollar Lines shall deposit with the Clerk of the Court a suitable instrument conveying its entire right, title and interest in its aforesaid operating rights to such successful bidder, to be delivered to the said purchaser upon the granting of the required approval by the said Commission and said Commissioner of said conveyance.

Further, the approved bidder shall have the option of

1. Granting Dollar Lines written permission to suspend all operations under its said operating rights pending the determination by the said Commission and said Commissioner of the bidder's application for approval of his acquisition of such rights. In such event the responsibility of defendants Pacific Greyhound Lines and Dollar Lines to preserve such operating rights shall be terminated for the purposes and within the terms of this judgment; or
2. Entering into an agreement with Dollar Lines for the continuance of operations and such other steps as may be necessary to preserve the operating rights of Dollar Lines, by which the approved bidder shall agree to pay to Dollar Lines monthly upon receipt of bill therefor the excess, if any, of expenses paid and liabilities incurred over the revenues received by Dollar Lines in the operation of the services covered by such operating rights, and by which Dollar Lines shall agree to pay to such successful bidder any excess of revenues received over expenses

paid and liabilities incurred in the operation of such services, in the event the conveyance of said operating rights to such bidder is approved by the said Commission and the said Commissioner.

In the event that no bids for the purchase of the operating rights of Dollar Lines are approved by the Court, pursuant to the preceding paragraphs of this section, any of the parties hereto shall be at liberty to apply to the Court for such other and further relief as may seem desirable to the end that actual divestiture of the said operating rights of Dollar Lines may be accomplished.

[*Reacquisition of Operating Rights Prohibited*]

IX.

Defendants The Greyhound Corporation, Pacific Greyhound Lines and Dollar Lines are hereby severally and jointly restrained and enjoined from hereafter reacquiring any of the operating rights now owned or claimed by defendant Dollar Lines and from acquiring, directly or indirectly, any stock or other financial or management interest or control over the purchaser of said operating rights under section VIII hereof or his or its successors or assignees.

[*Termination of Contracts Ordered*]

X.

Defendants Southern Pacific Company Pacific Greyhound Lines and The Greyhound Corporation are hereby directed and ordered to terminate each of the following contracts to which they or their corporate predecessors or subsidiaries are or were parties:

1. An agreement of April 2, 1929, between Southern Pacific Company and Pacific Transportation Securities, Inc., under which Southern Pacific Company agreed, among other things, not to engage in motor bus service within the area served by Pacific Transportation Securities, Inc., and under which Pacific Transportation Securities, Inc. agreed, among other things, to perform certain motor bus operations under guarantee by Southern Pacific Company.
2. Agreement of April 2, 1929, between Southern Pacific Land Company and Motor Transit Corporation, under which Southern Pacific Company agreed, among other things, not to engage in motor bus service within the area served by Pacific Transportation Securities, Inc.
3. Memorandum of Understanding dated March 17, 1931, between Southern Pacific Company and Pacific Greyhound Corporation, providing for the furnishing of certain motor bus operations by Pacific Greyhound Corporation under guarantee by Southern Pacific Company.
4. Agreement of December 23, 1931, between Southern Pacific Company and Pacific Greyhound Corporation, amending in certain respects the Memorandum of Understanding dated March 17, 1931, between the said parties (Item 3 above).
5. Letter Agreement of August 19, 1940, between Northwestern Pacific Railroad Company and Pacific Greyhound Lines, providing for the furnishing of certain motor bus operations by Pacific Greyhound Lines between Sausalito and San Francisco under guarantee by Northwestern Pacific Railroad Company.

The termination of such contracts and agreements shall not affect the liability of any party thereto for the settlement of any charges thereunder accruing prior to the date of such termination.

[*Auxiliary Service Prohibited Unless No Other Carrier is Willing or Able to Perform Such Service*]

XI.

Defendant Southern Pacific Company is hereby enjoined and restrained from hereafter entering into any contract with defendant Pacific Greyhound Lines under which the latter is to perform motor bus service supplemental or auxiliary to defendant Southern Pacific Company's rail service subject to an agreed guarantee by Southern Pacific Company of the net or gross income from such operations, unless:

1. There is, other than defendant Pacific Greyhound Lines, no other motor bus common carrier not a subsidiary of any carrier by rail which holds or when the service is required will hold operating rights from the Interstate Commerce Commission and appropriate state utility commissions to perform the entire interstate and intrastate service desired by defendant Southern Pacific Company over a particular route or separate operation; or
2. If another carrier or carriers of the type mentioned in (1) above exists, it or they have first been offered the same contract by defendant Southern Pacific Company and have signified a refusal to accept the same; or
3. If the contract has first been let to any other such motor bus common carrier referred to in (1) above and such contract has subsequently been terminated (a) By mutual consent, or (b) By Southern Pacific Company after material breach by the other motor bus common carrier, or (c) By such other motor bus common carrier in accordance with the terms of the contract, and there are no other motor bus common carriers of the type referred to in (1) above.

[*Agreements Embodying Restrictive Terms Prohibited*]

XII.

Each of the defendants Pacific Greyhound Lines, The Greyhound Corporation and Southern Pacific Company is hereby enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, any combination, conspiracy, contract, agreement, understanding, plan or program of concerted action by and between defendants (a) Pacific Greyhound Lines and The Greyhound Corporation, or either of them, on the one hand, and (b) defendant Southern Pacific Company, on the other hand, whereby either party is restricted in any way as to the terms and conditions on which it shall conduct its transportation business with third parties, or is restricted in any way from competing with the other party.

[*Amendment of Bylaws Required*]

XIII.

Each of the defendants Southern Pacific Company and The Greyhound Corporation is directed to present and approve as stockholders an amendment of section 46 of the bylaws of Pacific Greyhound Lines relating to stockholders' consent to amendments, so as to permit a majority of Pacific Greyhound Lines' stockholders to alter or repeal the provisions of the bylaws or to make new bylaws, and to take such steps as may be necessary to accomplish this purpose.

[*Participation by One Corporate Defendant in Affairs of Another Enjoined*]

XIV.

Defendant Southern Pacific Company is hereby enjoined and restrained from:

1. Participating, either directly or indirectly, in the election, designation, compensation or removal of any officer, director, committee member, or other official of defendant Pacific Greyhound Lines;
2. Allowing any of its officers, directors, employees or nominees to serve or act as an officer, director, committee member or official of defendant Pacific Greyhound Lines.
3. Participating in the determination of or in any way influencing the managerial and operating policies of defendant Pacific Greyhound Lines, or activities pursuant thereto;
4. Exercising the voting power of its stock in defendant Pacific Greyhound Lines, either directly or indirectly, on any question, issue or proposition, except as may hereafter be authorized by this Court under the provisions of section XX of this judgment and after notice given by defendant Southern Pacific Company to the Assistant Attorney General of the United States in charge of the Antitrust Division.

Nothing contained in this section shall apply to any corporation, copartnership or individual not owned, controlled or dominated by defendant Southern Pacific Company which or who may subsequently become a bona fide

purchaser of the stock interest or any part thereof which Southern Pacific Company now holds in defendant Pacific Greyhound Lines.

[Conditions Upon Which Defendant May Dispose of Stock of Another Defendant]

XV.

Defendant Southern Pacific Company is hereby enjoined and restrained from making any sale, pledge, or other disposition of any capital stock having voting rights of defendant Pacific Greyhound Lines now owned by it to any person or persons other than The Greyhound Corporation or Pacific Greyhound Lines except upon the following conditions:

1. The sale or pledge shall be at times and in quantities at the option of Southern Pacific Company.
2. No sale or pledge or other disposition shall be made by Southern Pacific Company, directly or indirectly, through a broker underwriting syndicate or other agency, to any rail or motor bus common carrier, or to any officer, director or nominee of any such carrier, or to any corporation, copartnership or individual dominated or controlled by any such carrier or by any of the defendants named in the amended complaint herein, or to any person owning any stock in Dollar Lines on October 24, 1945.
3. Prima facie evidence of compliance by defendant Southern Pacific Company with the provisions of paragraph (2) of this section shall be the filing with the Clerk of this Court within thirty (30) days after any sale, pledge or other disposition of said stock an affidavit duly executed by or on behalf of the transferee thereof to the effect that such transferee is not within any of the restricted classes of persons under the terms of (2) above.

[Defendant Enjoined from Maintaining Interest in Another Defendant]

XVI

Defendant Southern Pacific Company is hereby enjoined and restrained from hereafter acquiring, directly or indirectly, ownership of or beneficial interest in any shares of capital stock having voting rights of defendant Pacific Greyhound Lines, or any successor in interest thereto. Subject to the provisions of sections XIV and XVII hereof, this paragraph shall not be deemed to prohibit the retention by Southern Pacific Company of such stock as it may hold as of the date of the entry of this judgment or any stock received as a dividend thereon, until such time as it may sell or otherwise dispose of such stock in the manner herein provided.

[Legality of Retention by a Defendant of Certain Interests Not Adjudicated Herein]

XVII.

Nothing in this judgment shall be considered an adjudication of the legality or illegality of the retention by defendant Southern Pacific Company of such beneficial interest in the capital stock having voting rights of defendant Pacific Greyhound Lines as may be permitted under the terms of this judgment; and plaintiff shall be free at any time to apply to this Court under section XX hereof, or in an independent action, after notice to defendant Southern Pacific Company and an opportunity to be heard, for an order requiring Southern Pacific Company to divest itself of all of its ownership of and interest in such Pacific Greyhound Lines stock, and for any other and further relief; and in connection with such application or independent action the plaintiff shall not be estopped by any provision of this judgment.

XVIII.

Nothing contained in this judgment shall be deemed to restrain or prevent the defendants entering into this judgment, or any of them, from entering into any agreement or taking any action approved by the Interstate Commerce Commission which under the law in effect at the time of such approval is, when so approved, exempt from the provisions of the antitrust laws.

[Access to Defendants' Records]

XIX.

For the purpose of securing compliance with this judgment and for no other purpose, 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 (1) 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 said defendant relating to any matters contained in this judgment; (2) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding such matters; and (3) upon request said defendant shall submit such reports as might from time to time be reasonably necessary to the enforcement of this judgment, provided, however, that no information obtained by the means provided in this paragraph shall be divulged by the Department of justice to any person other than a duly authorized representative of such Department except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this judgment or as otherwise required by law.

[*Jurisdiction Retained*]

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