

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. California Fruit Growers Exchange; California. Fruit Exchange; Florida Citrus Exchange; Di Giorgio Fruit Corporation; American Fruit & Produce Auction Association, Inc.; American Central Fruit Auction Company; Baltimore Fruit Exchange; Consolidated Fruit Exchange, Incorporated; Detroit Fruit Auction Company; Fruit Auction Sales Company; New York Fruit Auction Corporation; H. Harris & Company; Philadelphia Terminals Auction Company; Union Fruit Auction Company; The United Fruit Auction Company., U.S. District Court, S.D. California, 1940-1943 Trade Cases ¶56,247, (Nov. 18, 1942)

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United States v. California Fruit Growers Exchange; California. Fruit Exchange; Florida Citrus Exchange; Di Giorgio Fruit Corporation; American Fruit & Produce Auction Association, Inc.; American Central Fruit Auction Company; Baltimore Fruit Exchange; Consolidated Fruit Exchange, Incorporated; Detroit Fruit Auction Company; Fruit Auction Sales Company; New York Fruit Auction Corporation; H. Harris & Company; Philadelphia Terminals Auction Company; Union Fruit Auction Company; The United Fruit Auction Company.

1940-1943 Trade Cases ¶56,247. U.S. District Court, S.D. California, Central Division. Civil Action No. 2577-BH, Filed November 18, 1942.

Fruit marketers and auctioneers enter a consent decree under the anti-trust laws enjoining them from conspiring to fix prices, to sell exclusively or preferentially in any specified manner or through any designated channel, to control the kind or amount or quality of fruits to be sold through any channel, to refuse to sell within predetermined distances of any auction center, or to refuse to sell in carlots or other quantities customarily sold. Defendants are also enjoined from threatening or coercing competitors; interfering with the distribution of fruit by motor truck; interfering with any private sale market; interfering with the purchase by others of fruits; misrepresenting the ownership or operating methods of any defendant auction company or shipper; causing any financial institution, transportation agency, or other organization, to coerce any shipper or buyer to conform to any designated marketing practice; securing preferences in terminal handling of fruits, or receiving or granting secret preferences; or imposing any condition in a sale which restricts the buyer's disposition of fruit acquired by him. The auction companies and association are enjoined from participating in a pool, purchasing fruits for resale at auction or private sale markets (with specified exceptions), extending loans or privileges to some producers and shippers not available to others, adopting rules or catalogs which unfairly favor certain shippers or buyers, misrepresenting or concealing facts respecting the marketing practices of any auction or private sale market, or imposing charges for facilities or services not supplied. The auction companies are required to post in their main offices, and in their principal auction sales rooms, certain information concerning stockholders, officers, and others interested in buying and selling, and a schedule of charges and terms of sale.

Decree entered before Peirson M. Hall, U. S, District Judge.

For plaintiff: Thurman Arnold, Assistant Attorney General; Harold F. Collins, Special Assistant to the Attorney General; Leo V. Silverstein, United States Attorney; Paul F. Myers, Special Attorney.

For defendants: Farrand & Farrand, by George E. Farrand, for California Fruit Growers Exchange. A. I. Diepenbrock for California Fruit Exchange. Counts Johnson for Florida Citrus Exchange. Herman Phleger for Di Giorgio Trust Corporation. Etnmett E. Doherty, and Robert G. Blanchard, by Robert G. Blanchard, for

American Fruit & Produce Auction Association, Inc. Newlin & Ashburn, by Paul Sandmeyer, for American Central Fruit Auction Company and for Detroit Fruit Auction Company. Herman Phleger for Baltimore Fruit Exchange (an operating unit of Di Giorgio Fruit Corporation). J. Leslie Morgan and H. T. Morrow, by H. T. Morrow, for Consolidated Fruit Exchange, Inc. Schuyler & Hennessy, William C. Graves, and Byron F. Story, by Byron F. Story, for Fruit Auction Sales Company. Norman S. Sterry for New York Fruit Auction Corporation. Nathan B. Bidwell, Finlayson, Bennett & Morrow and H. T. Morrow, by H. T. Morrow, for H. Harris & Company. T. Ewing Montgomery, Finlayson, Bennett & Morrow and H. T. Morrow, by H. T. Morrow, for Philadelphia Terminals Auction Company. Lucius K. Chase, Ransom W. Chase, and Chase, Barnes & Chase, by Ransom W. Chase, for Union Fruit Auction Company. Leslie, Hermann & Ritchie and Meserve, Mumper & Hughes, by Edwin A. Meserve and Roy L. Herndon for the United Fruit Auction Company.

Consent Decree

The United States of America having filed its complaint herein on the 16th day of November, 1942, against the defendants named hereinabove; all of the defendants having appeared severally and filed their answer to such complaint denying the substantive allegations thereof, and all parties hereto by their respective attorneys herein having severally consented to the entry of this Final Decree herein without trial and without admission by any party in respect of any issue:

Now, therefore, before any testimony has been taken herein, and upon the consent of all parties hereto, it is hereby

Ordered and decreed as follows:

I

[Jurisdiction and Cause of Action]

The Court has jurisdiction of the subject matter hereof and of all the parties hereto:

the complaint states a cause of action against the defendants and each of them under the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies" and the acts amendatory thereof and supplemental thereto.

II

[Definitions]

The ensuing terms and phrases, as used in this Decree, will have meaning as follows:

1. "Fruits" mean fresh citrus and fresh deciduous fruits of all kinds marketed in interstate commerce.
2. "Shippers" mean persons, firms, associations, and corporations which ship, distribute, and sell fruits.
3. "Defendant shippers" are: California Fruit Growers Exchange, California Fruit Exchange, Florida Citrus Exchange, DiGiorgio Fruit Corporation (but only as a shipper).
4. "Auction companies" mean persons, firms, associations, and corporations by and through which fruits are sold at auction.
5. "Defendant auction companies" are: American Central Fruit Auction Company, Baltimore Fruit Exchange (an operating unit of DiGiorgio Fruit Corporation, but only as such operating unit), Consolidated Fruit Exchange, Incorporated, Detroit Fruit Auction Company, Fruit Auction Sales Company, H. Harris & Company, New York Fruit Auction Corporation, Philadelphia Terminals Auction Company, Union Fruit Auction Company, The United Fruit Auction Company.
6. "Auction markets" mean places at and through which fruits are sold at auction.

7. "Auction centers" mean cities in which auction markets operate, and include the following: Baltimore, Maryland; Boston, Massachusetts; Chicago, Illinois; Cleveland, Ohio; Cincinnati, Ohio; Detroit, Michigan; New York, New York; Philadelphia, Pennsylvania; Pittsburgh, Pennsylvania; and St. Louis, Missouri.

8. "Private sale markets" mean wholesale trading places at and through which fruits are sold otherwise than at auction.

9. "Subsidiary" means either (a) a corporation 50 percent or more of whose issued and outstanding stock of voting class, or of all classes, is owned, directly or indirectly, by another corporation, or (b) a corporation whose policies or activities are dominated or controlled by another corporation.

III

[*Conspiracies Enjoined*]

Each defendant, its directors, officers, agents, employees, successors, and subsidiaries, and all persons acting for or on behalf of any defendant, its successors, or subsidiaries, be and they are hereby enjoined and restrained from conspiring among themselves or with any other person:

1. To fix, maintain, or stabilize prices at which fruits are quoted or sold;
2. To distribute or sell fruits exclusively or preferentially in any specified manner or through any designated channel, whether it be through auction markets, private sale markets, f.o.b. production centers, or otherwise, or to increase, decrease, fix, control, or determine the kind or amount or quality of fruits to be quoted, supplied, distributed or sold during any period of time at any auction or private sale market or at any production center, or through any channel, or by any shipper, or to any broker, receiver, or buyer;
3. To refuse to distribute or sell fruits at production centers or at private sale in any auction-center or in any city or district adjacent to or within predetermined distances of any auction center, or to refuse to distribute or sell fruits of any kind or grade at any place or market in carlots or other quantities customarily sold at such place or market, to any designated buyer or class of buyers, or to any person known or believed to engage in the practice of diverting or re-shipping fruits to other places or markets.

IV

[*Individual Activities Enjoined*]

Each defendant, its directors, officers, agents, employees, successors, and subsidiaries, and all persons acting for or on behalf of any defendant, its successors or subsidiaries, be and each of them is hereby enjoined and restrained from:

1. Threatening or coercing any competitor for the purpose of preventing, restricting, or eliminating competition, in the distribution or marketing of fruits at any auction or private sale market ;
2. Obstructing, preventing, or interfering with the distribution of fruits by motor truck, or the marketing of fruits so distributed at auction, private sale, or in any other manner ;
3. Obstructing, restricting, eliminating the use of, or interfering with any private sale market in any auction center or elsewhere, or any operator or patron thereof, for the purpose of destroying competition in the distribution or sale of fruits, through threatening, intimidating, or coercing any such operator or patron or any transportation company ;
4. Obstructing, restricting, or interfering with the purchase by others of fruits, through any particular channel, or place, or obstructing, restricting, or interfering with the purchase of fruits directly from any other shipper by any agency of federal, state, or local Government or any other person ;
5. Misrepresenting the ownership or operating methods of any defendant auction company or defendant shipper ;

6. Requesting or causing any financial Institution, transportation agency, or credit agency, or any other organization, or any representative thereof, to coerce in any manner any producer, shipper, distributor, or buyer to conform to any designated marketing practice or program or to refrain from dealing with any designated marketing agency;

7. Securing preferences or advantages, through threatening or coercing any transportation company or terminal market company, or any official or employee thereof, in the terminal handling, servicing, or sale of fruits; or demanding, receiving from, or granting to any shipper, auction company, operator of a private sale market, or transportation company any secret charge, secret rebate, secret concession, or any other secret preference or advantage;

8. Imposing any term or condition in connection with a sale of fruits to any buyer which restricts such buyer's use or disposition of any fruit acquired by him, or obligates such buyer then or thereafter to support or patronize any defendant exclusively or preferentially, or which, except for occasional shipments of mixed cars, makes the purchase at a terminal market of a designated kind of fruit a condition of availability of any other kind of fruit to such buyer.

V

[*Activities of Auction Companies and Association Enjoined*]

The defendant American Fruit & Produce Auction Association, Inc., and the defendant auction companies and their successors and subsidiaries and all persons acting for or on behalf of them, or any of them, be and each of them is hereby further enjoined and restrained from directly or indirectly ;

1. Sponsoring, establishing, or participating in any pool for the purchase or sale of fruits ;
2. Purchasing fruits for resale at auction or private sale markets, except when fruits of the kind purchased and offered for resale are not available from shippers, and provided that announcement of the ownership thereof by the auction company be made at the time of offer for resale ;
3. Making loans or advances or extending privileges to producers or shippers unless the same be available on equal terms to all persons selling through such defendant auction company ;
4. Adopting, publishing, or utilizing auction rules or catalogs which list, arrange, classify, segregate, or fix the manner, time, or places of sale of fruits so as to unfairly favor certain, or any, shippers or buyers as against other shippers or buyers ;
5. Making known or available any Information concerning any shipper or shipment unless similar information concerning all other shippers or shipments is likewise available upon equal terms to the trade generally ;
6. Misrepresenting or concealing any material fact respecting the marketing policies, practices, or accomplishments of any auction or private sale market or any auction company ;
7. Imposing or collecting charges or fees for its own account for facilities or services which are not being supplied or rendered.

VI

[*Information to Be Posted by Auction Companies*]

Each defendant auction company shall post and maintain in a conspicuous place in its main office and also in its principal fruit auction sales room:

1. A complete and current list of its stockholders, bondholders, and secured creditors who, to the knowledge of the auction company or its officers, are producers, shippers, receivers, brokers, or buyers of fruits;

2. A complete and current list of its officers, directors, partners, and employees who, to the knowledge of the auction company or its officers, are financially interested in the business of any shipper, receiver, broker, or buyer of fruits;
3. A complete and current schedule of all its charges, fees, and terms of sale for all classes of commodities, shippers, and buyers.

VII

[*Department of Justice to Have Access to Records, Interviews and Reports*]

For the purposes of securing compliance with this Decree, and for no other purpose, duly authorized representatives of the Department of Justice, on written request of the Attorney General or an Assistant Attorney General and on reasonable notice to any one of the defendant corporations made to the principal office of such defendant corporations, shall be permitted, subject to any legally recognized privilege: (1) access, during the office hours of such defendant corporations, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant corporations, relating to any matters contained in this Decree; (2) subject to the reasonable convenience of such defendant corporations and without restraint or interference from them, to interview officers or employees of such defendant corporations, who may have counsel present, regarding any such matters; and (3) such defendant corporations, on such request, shall submit such reports in respect of any such matters as from time to time may 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 for the purpose of securing compliance with this Decree in which the United States is a party or as otherwise required by law.

VIII

[*Jurisdiction Retained*]

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this Decree 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 Decree, for the modification or termination of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.