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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

IN RE: TERMINATION OF LEGACY ANTITRUST JUDGMENTS IN THE DISTRICT OF UTAH	2:19-mc-00219-DAK
UNITED STATES OF AMERICA, Plaintiff, v. THE UNION PACIFIC RAILROAD COMPANY, *et al.*, Defendants.	In Equity No. 2136

UNITED STATES OF AMERICA, Plaintiff, v. UTAH-IDAHO WHOLESALE GROCERS' ASSOCIATION, *et al.*, Defendants.	In Equity No. 8158
UNITED STATES OF AMERICA, Plaintiff, v. THE LUCKY LAGER BREWING COMPANY OF SAN FRANCISCO, Defendant.	Civil Action No. C-15-58
UNITED STATES OF AMERICA, Plaintiff, v. UTAH PHARMACEUTICAL ASSOCIATION, Defendant.	Civil Action No. C-30-61
UNITED STATES OF AMERICA, Plaintiff, v. BEATRICE FOODS CO., *et al.*, Defendants.	Civil Action No. NC-3869 NC-38-69

MOTION OF THE UNITED STATES TO ADMINISTRATIVELY CONSOLIDATE AND TERMINATE LEGACY ANTITRUST JUDGMENTS AND MEMORANDUM OF LAW IN SUPPORT

The United States moves to administratively consolidate the five above-captioned antitrust cases, and to terminate the judgments in each of these cases pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. This Court entered these judgments in cases brought by the United States between 1913 and 1972; thus, these cases are between forty-seven and one hundred six years old. The United States has concluded that because of their age and changed circumstances since their entry, these decades-old judgments no longer serve to protect competition. The United States gave the public notice and the opportunity to comment on its intent to seek termination of the judgments in the above-captioned cases; it received no comments opposing termination. For these and other reasons explained below, the United States requests that these judgments be terminated.

I. BACKGROUND

From 1890, when the antitrust laws were first enacted, until the late 1970s, the United States frequently sought entry of antitrust judgments whose terms never expired.[1] Such perpetual judgments were the norm until 1979, when the Antitrust Division of the United States Department of Justice ("Antitrust Division") adopted the practice of including a term limit of ten years in nearly all of its antitrust judgments. Perpetual judgments entered before the policy change, however, remain in effect indefinitely unless a court terminates them. Although a defendant may move a court to terminate a perpetual judgment, few defendants have done so.

[1] The primary antitrust laws are the Sherman Act, 15 U.S.C. §§ 1-7, and the Clayton Act, 15 U.S.C. §§ 12-27. The judgments the United States seeks to terminate with the accompanying motion concern violations of these two laws.

There are many possible reasons for this, including that defendants may not have been willing to bear the costs and time resources to seek termination, defendants may have lost track of decades-old judgments, individual defendants may have passed away, or firm defendants may have gone out of business. As a result, hundreds of these legacy judgments remain open on the dockets of courts around the country. Originally intended to protect the loss of competition arising from violations of the antitrust laws, nearly all of these judgments likely have been rendered obsolete by changed circumstances.

The Antitrust Division recently implemented a program to review and, when appropriate, seek termination of legacy judgments. The Antitrust Division's Judgment Termination Initiative encompasses review of all of its outstanding perpetual antitrust judgments. The Antitrust Division described the initiative in a statement published in the Federal Register.[2] In addition, the Antitrust Division established a website to keep the public apprised of its efforts to terminate perpetual judgments that no longer serve to protect competition.[3] The United States believes that its outstanding perpetual antitrust judgments presumptively should be terminated; nevertheless, the Antitrust Division examined each judgment covered by this motion to ensure that it is suitable for termination. The Antitrust Division also gave the public notice of—and the opportunity to comment on—its intention to seek termination of these judgments.

In brief, the process by which the United States has identified judgments it believes should be terminated is as follows:

- The Antitrust Division reviewed its perpetual judgments entered by this Court to identify those that no longer serve to protect competition such that termination would be appropriate.

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[2] Department of Justice's Initiative to Seek Termination of Legacy Antitrust Judgments, 83 Fed. Reg. 19,837 (May 4, 2018), https://www.gpo.gov/fdsys/granule/FR-2018-05-04/2018-09461.

[3] https://www.justice.gov/atr/JudgmentTermination.

- When the Antitrust Division identified a judgment it believed suitable for termination, it posted the name of the case and a link to the judgment on its public Judgment Termination Initiative website, https://www.justice.gov/atr/judgment-termination-initiative-utah-district.

- During a thirty-day period beginning on May 17, 2018, and continuing through June 18, 2018, the public had the opportunity to submit comments regarding each proposed termination to the Antitrust Division.

- Having received no comments regarding the above-captioned judgments, the United States moves this Court to terminate them.

The United States followed this process for each judgment it seeks to terminate by this motion.[4]

The remainder of this memorandum is organized as follows: Section II describes the Court's jurisdiction to terminate the judgments in the above-captioned cases. Section III explains that perpetual judgments rarely serve to protect competition and those that are more than ten years old should be terminated absent compelling circumstances. This section also describes the additional reasons that the United States believes each of the judgments should be terminated. Appendix A attaches a copy of each final judgment that the United States seeks to terminate. Appendix B summarizes the terms of each judgment and the United States' reasons for seeking termination.

[4] The United States followed this process to move several other district courts to terminate legacy antitrust judgments. *See United States v. Am. Amusement Ticket Mfrs. Ass'n*, Case 1:18-mc-00091 (D.D.C. Aug. 15, 2018) (terminating nineteen judgments); *In re: Termination of Legacy Antitrust Judgments*, No. 2:18-mc-00033 (E.D. Va. Nov. 21, 2018) (terminating five judgments); *United States v. The Wachovia Corp. and Am. Credit Corp.*, Case No. 3:75CV2656-FDW-DSC (W.D.N.C. Dec. 17, 2018) (terminating one judgment); *United States v. Capital Glass & Trim Co., et al.*, Case No. 3679N (M.D. Ala. Jan. 2, 2019) (terminating one judgment); *United States v. Standard Sanitary Mfg. Co., et al.*, Case 1:19-mc-00069-RDB (D. Md. Feb. 7, 2019) (terminating nine judgments).

II. APPLICABLE LEGAL STANDARDS FOR TERMINATING THE JUDGMENTS

This Court has jurisdiction to terminate the judgments in the above-captioned cases. A copy of each of the judgments is attached in Appendix A. All but one of the judgments expressly provide that the Court retains jurisdiction. Although one of the judgments does not explicitly state the Court retains jurisdiction, it has long been recognized that courts are vested with inherent power to modify judgments they have issued that regulate future conduct. *See United States v. Swift & Company*, 286 U.S. 106, 114-15 (1932).

Moreover, the Court's inherent authority to terminate a judgment it has issued is now encompassed in the Federal Rules of Civil Procedure. Rule 60(b)(5) and (b)(6) provides that, "[o]n motion and just terms, the court may relieve a party . . . from a final judgment . . . (5) [when] applying it prospectively is no longer equitable; or (6) for any other reason that justifies relief." Fed. R. Civ. P. 60(b)(5)-(6); *accord In re Gledhill*, 76 F.3d 1070, 1080 (10th Cir. 1996) ("Rule 60(b)(6) gives the court a grand reservoir of equitable power to do justice . . . [and] grants federal courts broad authority to relieve a party from a final judgment upon such terms as are just . . . for . . . any other reason justifying relief from the operation of the judgment." (citations and quotations omitted).

Given its jurisdiction and its authority, the Court may terminate each judgment for any reason that justifies relief, including that the judgments no longer serve their original purpose of protecting competition.[5] Termination of these judgments is warranted.

[5] In light of the circumstances surrounding the judgments for which it seeks termination, the United States does not believe it is necessary for the Court to make an extensive inquiry into the facts of each judgment to terminate them under Fed. R. Civ. P. 60(b)(5) or (b)(6). All of these judgments would have terminated long ago if the Antitrust Division had the foresight to limit them to ten years in duration as under its policy adopted in 1979. Moreover, the passage of decades and changed circumstance since their entry, as described in this memorandum, means

III. ARGUMENT

It is appropriate to terminate the perpetual judgments in each the above-captioned cases because they no longer continue to serve their original purpose of protecting competition. The United States believes that the judgments presumptively should be terminated because their age alone suggests they no longer protect competition. Other reasons, however, also weigh in favor of terminating these judgments, including that defendants likely no longer exist, terms of the judgment merely prohibit that which the antitrust laws already prohibit, or changed market conditions likely have rendered the judgment ineffectual. Under such circumstances, the Court may terminate the judgments pursuant to Rule 60(b)(5) or (b)(6) of the Federal Rules of Civil Procedure.

A. The Judgments Presumptively Should Be Terminated Because of Their Age

Permanent antitrust injunctions rarely serve to protect competition. The experience of the United States in enforcing the antitrust laws has shown that markets almost always evolve over time in response to competitive and technological changes. These changes may make the prohibitions of decades-old judgments either irrelevant to, or inconsistent with, competition. The development of new products that compete with existing products, for example, may render a market more competitive than it was at the time of entry of the judgment or may even eliminate a market altogether, making the judgment irrelevant. In some circumstances, a judgment may be an impediment to the kind of adaptation to change that is the hallmark of competition, undermining the purposes of the antitrust laws. These considerations, among others, led the

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that it is likely that the judgments no longer serve their original purpose of protecting competition.

Antitrust Division in 1979 to establish its policy of generally including in each judgment a term automatically terminating the judgment after no more than ten years.[6]

The judgments in the above-captioned matters—all of which are decades old—presumptively should be terminated for the reasons that led the Antitrust Division to adopt its 1979 policy of generally limiting judgments to a term of ten years. There are no affirmative reasons for the judgments to remain in effect; indeed, there are additional reasons for terminating them.

B. The Judgments Should Be Terminated Because They Are Unnecessary

In addition to age, other reasons weigh heavily in favor of termination of each judgment. These reasons include: (1) most defendants likely no longer exist, (2) the judgments largely prohibits that which the antitrust laws already prohibit, and (3) market conditions likely have changed. Each of these reasons suggests the judgments no longer serve to protect competition. In this section, we describe these additional reasons, and we identify those judgments that are worthy of termination for each reason. Appendix B summarizes the key terms of each judgment and the reasons to terminate it.

1. Most Defendants Likely No Longer Exist

The Antitrust Division believes that most of the defendants in the following cases brought by the United States likely no longer exist:

- *Utah-Idaho Wholesale Grocers' Assn, et al.*, In Equity No. 8158 (judgment entered 1926), and
- *Beatrice Foods Co., et al.*, Civil Action No. NC-3869 (judgment entered 1972).

[6] U.S. DEP'T OF JUSTICE, ANTITRUST DIVISION MANUAL at III-147 (5th ed. 2008), https://www.justice.gov/atr/division-manual.

These judgments relate to very old cases brought against corporate defendants. The cases are between forty-seven and ninety-three years old. With the passage of time, several of the corporate defendants appear to have gone out of existence, as discussed in more detail in Appendix B. To the extent that defendants no longer exist, the related judgment serves no purpose, which is a reason to terminate this judgment.

2. Terms of Judgment Prohibit Acts Already Prohibited by Law

The Antitrust Division has determined that the core provisions of the judgments in the following cases merely prohibit acts that are illegal under the antitrust laws, such as price fixing, attempted monopolization, and acquisitions in which the effect may be substantially to lessen competition:

- *Union Pacific Railroad, et al.,* In Equity No. 2136 (prohibiting acquisitions substantially likely to lessen competition),
- *Utah-Idaho Wholesale Grocers' Assn, et al.,* In Equity No. 8158 (prohibiting price fixing and boycotts),
- *Lucky Lager Brewing Co., et al.,* Civil Action No. C-15-58 (prohibiting acquisitions substantially likely to lessen competition),
- *Utah Pharmaceutical Association,* Civil Action No. C-30-61 (prohibiting price fixing), and
- *Beatrice Foods Co., et al.,* Civil Action No. NC-3869/38-69 (prohibiting price fixing, bid rigging, and territory allocation).

These terms amount to little more than an admonition that defendants shall not violate the law. To the extent these judgments include terms that do little to deter anticompetitive acts, they serve no purpose and there is reason to terminate them.

3. Market Conditions Likely Have Changed

The Department has determined that the following judgment concerns markets that likely now face different competitive forces such that the behavior at issue likely no longer is of competitive concern:

- *Lucky Lager Brewing Co., et al.*, Civil Action No. C-15-58 (concerning an unlawful merger).

This judgment is sixty years old, and substantial changes in the beer industry likely have rendered it obsolete. Some of the beer brands at issue in the judgment no longer exist, and those that remain face a very different set of competitors and changed industry dynamics. Moreover, the defendant, Lucky Lager, has since been acquired by another brewer. In sum, market dynamics in this industry appear to have changed so substantially that the factual conditions that underlay the decisions to enter the judgment no longer exist.

C. There Has Been No Public Opposition to Termination

The United States has provided adequate notice to the public regarding its intent to seek termination of the judgments. On April 25, 2018, the Antitrust Division issued a press release announcing its efforts to review and terminate legacy antitrust judgments, and noting that it would begin its efforts by proposing to terminate judgments entered by the federal district courts in Washington, D.C., and Alexandria, Virginia.[7] On May 4, 2018, the Antitrust Division described its Judgment Termination Initiative in a statement published in the Federal Register.[8] On May 17, 2018, the Antitrust Division listed the judgments in the above-captioned cases on its public website, describing its intent to move to terminate the judgments.[9] The notice identified

[7] Press Release, Department of Justice, Department of Justice Announces Initiative to Terminate "Legacy" Antitrust Judgments, (April 25, 2018), https://www.justice.gov/opa/pr/department-justice-announces-initiative-terminate-legacy-antitrust-judgments.

[8] Department of Justice's Initiative to Seek Termination of Legacy Antitrust Judgments, 83 Fed. Reg. 19,837 (May 4, 2018), https://www.gpo.gov/fdsys/granule/FR-2018-05-04/2018-09461.

[9] https://www.justice.gov/atr/JudgmentTermination, link titled "View Judgments Proposed for Termination in Utah District."

each case, linked to the judgment, and invited public comment. The Division received no comments concerning the judgments in any of the above-captioned cases.

IV. CONCLUSION

For the foregoing reasons, the United States believes termination of the judgments in each of the above-captioned cases is appropriate, and respectfully requests that the Court enter an order terminating them, in the form of the Proposed Order attached hereto.

Respectfully submitted,

Dated: April 2, 2019

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