

**FILED**  
U. S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

APR 29 2019

UNITED STATES OF AMERICA,  
Plaintiff,

v.

CONTINENTAL GRAIN COMPANY,  
Defendant.

BY  
DEPUTY \_\_\_\_\_

Civil Action No. CA-6733

**THE UNITED STATES' MOTION AND MEMORANDUM REGARDING  
TERMINATION OF LEGACY ANTITRUST JUDGMENT**

The United States moves to terminate the judgment in the above-captioned antitrust case pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. This Court entered the above-captioned judgment, which enjoined Defendant Continental Grain Company from conditioning the availability of its grain loading services on an agreement to use particular stevedore services for grain handling, in 1970, nearly fifty years ago. After examining the judgment—and after soliciting public comments on the judgment's proposed termination—the United States has concluded that termination of this judgment is appropriate. Termination will permit the Court to clear its docket, the United States to clear its records, and businesses to clear their books, allowing each to utilize its resources more effectively. For these and other reasons explained below, the United States requests that the 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.<sup>1</sup> 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. 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 company 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, none of these judgments likely continues to do so because of changed circumstances.

The Antitrust Division has 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.<sup>2</sup> In addition, the Antitrust Division established a website to keep the public apprised of its efforts to terminate

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<sup>1</sup> 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 judgment the United States seeks to terminate here concerns a violation of Section 1 of the Sherman Act.

<sup>2</sup> 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>.

perpetual judgments that no longer serve to protect competition.<sup>3</sup> The United States believes that its outstanding perpetual antitrust judgments presumptively should be terminated; nevertheless, the Antitrust Division is examining each judgment to ensure that it is suitable for termination. The Antitrust Division is giving the public notice of—and the opportunity to comment on—its intention to seek termination of its perpetual judgments.

In brief, the process the United States is following to determine whether to move to terminate a perpetual antitrust judgment is as follows:

- The Antitrust Division reviews each perpetual judgment to determine whether it no longer serves to protect competition such that termination would be appropriate.
- If the Antitrust Division determines a judgment is suitable for termination, it posts the name of the case and the judgment on its public Judgment Termination Initiative website, <https://www.justice.gov/atr/JudgmentTermination>.
- The public has the opportunity to comment on each proposed termination within thirty days of the date the case name and judgment are posted to the public website.
- Following review of public comments, the Antitrust Division determines whether the judgment still warrants termination; if so, the United States now moves to terminate it.

The United States followed this process for the judgment it seeks to terminate by this motion.<sup>4</sup>

The remainder of this motion is organized as follows: Section II describes the Court's jurisdiction to terminate the judgment in the above-captioned case and the applicable legal

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<sup>3</sup> *Judgment Termination Initiative*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/atr/JudgmentTermination>.

<sup>4</sup> The United States followed this process to move several other district courts to terminate legacy antitrust judgments. See *United States v. Kahn's Bakery, Inc., et al.*, Civ. No. EP-75-CA-106 (W.D. Tex. Mar. 26, 2019) (terminating one judgment); *United States v. Martin Linen Supply Co.*, Civ. No. SA-19-MC-121-XR (W.D. Tex. Mar. 4, 2019) (terminating one judgment); *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).

standards for terminating the judgment. Section III explains that perpetual judgments rarely serve to protect competition and those that are more than ten years old presumptively should be terminated. Section III also presents factual support for termination of the judgment. Section IV concludes. Appendix A attaches a copy of the final judgment that the United States seeks to terminate.

## **II. APPLICABLE LEGAL STANDARDS FOR TERMINATING THE JUDGMENT**

This Court has jurisdiction and authority to terminate the judgment in the above-captioned case. The judgment, a copy of which is included in Appendix A, provides that the Court retains jurisdiction. In addition, the Federal Rules of Civil Procedure grant the Court authority to terminate each judgment. 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); *see also Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 190 (5th Cir. 2008) (“A Rule 60(b)(5) motion is the appropriate vehicle for modifying a permanent injunction that has prospective effect, regardless of whether the modification expands restrictions or eliminates restrictions in the injunction.”); *Bros. Inc. v. W.E. Grace Mfg. Co.*, 320 F.2d 594, 608 (5th Cir. 1963) (Rule 60(b)(6) “must mean to make available those grounds which equity has long recognized as a basis for relief.”) (citation omitted); *cf. United States v. Kahn’s Bakery, Inc., et al.*, Civ. No. EP-75-CA-106 (W.D. Tex. Mar. 26, 2019) (terminating one legacy antitrust judgment); *United States v. Martin Linen Supply Co.*, Civ. No. SA-19-MC-121-XR (W.D. Tex. Mar. 4, 2019) (terminating one legacy antitrust judgment).

Thus, the Court may terminate this judgment for any reason that justifies relief, including that the judgment no longer serves its original purpose of protecting competition.<sup>5</sup> Termination of this judgment is warranted.

### **III. ARGUMENT**

It is appropriate to terminate the perpetual judgment in *U.S. v. Continental Grain Company* because it no longer serves its original purpose of protecting competition. The decree prohibits Defendant Continental Grain from conditioning grain loading at any Continental-operated U.S. grain elevator upon any person agreeing to use only Continental-specified stevedore services for grain handling. The United States believes that the judgment presumptively should be terminated because its age alone suggests it no longer protects competition. Under such circumstances, the Court may terminate the judgment pursuant to Rule 60(b)(5) or (b)(6) of the Federal Rules of Civil Procedure.

#### **A. The Judgment Presumptively Should Be Terminated Because of Its 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. These considerations, among others, led the Antitrust Division in 1979 to establish its policy of

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<sup>5</sup> In light of the circumstances surrounding the judgment 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 the judgment to terminate it under Fed. R. Civ. P. 60(b)(5) or (b)(6). This judgment would have terminated long ago if the Antitrust Division had the foresight to limit it to ten years in duration as under its policy adopted in 1979. Moreover, the passage of decades and changed circumstance since its entry, as described in this memorandum, means that it is likely that the judgment no longer serves its original purpose of protecting competition.

generally including in each judgment a term automatically terminating the judgment after no more than ten years.<sup>6</sup>

The judgment in *U.S. v. Continental Grain Company*—nearly fifty years 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. Should the Antitrust Division learn of any tying behavior prohibited in the consent decree in the future, it has all the investigative and prosecutorial powers necessary to ensure that competition is not harmed.

**B. 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.<sup>7</sup> On June 1, 2018, the Antitrust Division listed this judgment on its public website, describing its intent to move to terminate the judgment.<sup>8</sup> The notice identified and linked to the final judgment in the above-caption case, and invited public comment. The Division received no comments concerning this judgment.

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

<sup>7</sup> Press Release, *Department of Justice Announces Initiative to Terminate "Legacy" Antitrust Judgments*, U.S. DEP'T OF JUSTICE (April 25, 2018), <https://www.justice.gov/opa/pr/department-justice-announces-initiative-terminate-legacy-antitrust-judgments>.

<sup>8</sup> *Judgment Termination Initiative*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/atr/JudgmentTermination>; *Judgment Termination Initiative: Eastern District of Texas*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/atr/judgment-termination-initiative-texas-eastern-district> (last updated Oct. 2, 2018).

**IV. CONCLUSION**

For the foregoing reasons, the United States believes termination of the judgment in the above-captioned case is appropriate, and respectfully requests that the Court enter an order terminating it.

Respectfully submitted,

Dated: April 24, 2019

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