

**UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF TENNESSEE**

IN RE: TERMINATION OF LEGACY
ANTITRUST JUDGMENTS IN THE
EASTERN DISTRICT OF TENNESSEE

No.

UNITED STATES OF AMERICA,
Plaintiff,

v.

ADDYSTON PIPE & STEEL COMPANY,
ET AL.,
Defendants;

Civil Action No. 539

UNITED STATES OF AMERICA,
Plaintiff,

v.

RETAIL LIQUOR DEALERS
ASSOCIATION OF CHATTANOOGA, ET
AL.,
Defendants;

Civil Action No. 2554

UNITED STATES OF AMERICA,
Plaintiff,

v.

TIMES PRINTING COMPANY,
Defendant;

Civil Action No. 5836

**MEMORANDUM IN SUPPORT OF THE MOTION OF
THE UNITED STATES TO TERMINATE LEGACY ANTITRUST JUDGMENTS**

The United States respectfully submits this memorandum in support of its motion to terminate three legacy antitrust judgments. The Court entered these judgments in cases brought by the United States between 1900 and 1970; thus, they are between forty-eight and one hundred eighteen years old. After examining each judgment—and after soliciting public comments on each proposed termination—the United States has concluded that termination of these judgments is appropriate. Termination will permit the Court to clear its docket, the Department to clear its records, and businesses to clear their books, allowing each to utilize its resources more effectively.

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. 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

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 one or both of these laws.

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.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 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.⁴

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.

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

⁴ Given the extensive notice provided to the public, the lack of public opposition, the age of the judgment, and the relief sought, the United States does not believe that additional service of this motion is necessary.

- 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 moves to terminate it.

The United States followed this process for each judgment it seeks to terminate by this motion.⁵

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 and the applicable legal standards for terminating the judgments. Section III explains that perpetual judgments rarely serve to protect competition and those that are more than ten years old presumptively should be terminated. This section also describes the additional reasons that the United States believes each of the judgments should be terminated. Section IV concludes. 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. Finally, Appendix C is a Proposed Order Terminating Final Judgments.

II. APPLICABLE LEGAL STANDARDS FOR TERMINATING THE JUDGMENTS

This Court has jurisdiction to terminate the judgments in the above-captioned cases. Two of the three judgments, copies of which are included in Appendix A, provide that the Court

⁵ 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).

retains jurisdiction. Jurisdiction was not explicitly retained in one⁶ of the above-captioned cases, but it has long been recognized that courts are vested with inherent power to modify judgments they have issued which regulate future conduct.⁷ 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 Waste Mgmt. of Ohio v. City of Dayton*, 132 F.3d 1142, 1146 n.4 (6th Cir. 1997) (“[Rule] 60(b)(5) specifically provides a mechanism for obtaining a modification of a consent decree when it is ‘no longer equitable that the judgment should have prospective application.’”) (quoting Fed. R. Civ. P. 60(b)(5)); *Cincinnati Ins. Co. v. Byers*, 151 F.3d 574, 578 (6th Cir. 1998) (explaining that a court should terminate a judgment under Rule 60(b)(6) “when . . . substantial justice would be served,” but that it should only apply Rule 60(b)(6) “in exceptional extraordinary circumstances which are not addressed by the first five numbered clauses of [Rule 60(b)]”) (quoting *Hopper v. Euclid Manor Nursing Home, Inc.*, 867 F.2d 291, 294 (6th Cir. 1989)).

⁶ *United States v. Addyston Pipe & Steel Company, et al.*, Civil No. 539 (E.D. Tenn. Jun. 5, 1900).

⁷ *See United States v. Swift & Company*, 286 U.S. 106, 114-15 (1932) (“We are not doubtful of the power of a court of equity to modify an injunction in adaptation to changed conditions, though it was entered by consent. . . . Power to modify the decree was reserved by its very terms, and so from the beginning went hand in hand with its restraints. If the reservation had been omitted, power there still would be by force of principles inherent in the jurisdiction of the chancery. A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need.”) (citations 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.⁸ Termination of these judgments is warranted.

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, that terms of the judgment merely prohibit that which the antitrust laws already prohibit, and that 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

⁸ 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 that it is likely that the judgments no longer serve their original purpose of protecting competition.

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 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.⁹

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.

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 judgment 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. 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 *Retail Liquor Dealers Association of Chattanooga, et al.*, Civil No. 2554, likely no longer exist or are deceased. This judgment relates to a case brought more than sixty years ago against individuals, trade

⁹ U.S. DEP'T OF JUSTICE, ANTITRUST DIVISION MANUAL at III-147 (5th ed. 2008), <https://www.justice.gov/atr/division-manual>.

associations, and companies. The judgment required the dissolution of the two trade association defendants. With the passage of time, the individual defendants in this case likely have passed away and some company defendants likely have ceased to exist. To the extent that defendants no longer exist, the related judgment serves no purpose, which is a reason to terminate it.

2. Terms of Judgment Prohibit Acts Already Prohibited by Law

The Antitrust Division has determined that the core provisions of the judgment in *Addyston Pipe & Steel, et al.*, Civil No. 539, merely prohibit bid rigging, an act that is illegal under the antitrust laws.

These terms amount to little more than an admonition that defendants shall not violate the law. Absent such terms, defendants who engage in the type of behavior prohibited by these judgments still face the possibility of imprisonment, significant criminal fines, and treble damages in private follow-on litigation, thereby making such violations of the antitrust laws unlikely to occur. 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 judgments concern products or markets that likely no longer exist, no longer are substantial in size, or now face different competitive forces such that the behavior at issue likely no longer is of competitive concern:

- *Addyston Pipe & Steel Company, et al.*, Civil No. 539 (concerning iron pipe), and
- *Times Printing Company*, Civil No. 5836 (concerning newspaper publication).

These judgments are more than forty years old, and substantial changes in their respective industries and firms during the decades since their entry likely have rendered them obsolete. The *Addyston Pipe* judgment was entered in 1900, and since then, the conspiring defendants have merged into one entity. The rights and obligations created by the *Times Printing Company*

judgment, which was entered in 1970, have lapsed. Market dynamics in these industries appear to have changed so substantially that the factual conditions that underlay the decisions to enter the judgments 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.¹⁰ On September 21, 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.¹¹ The notice identified each case, linked to the judgment, and invited public comment. No comments were received.

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. A proposed order terminating the judgments in the above-captioned cases is attached as Appendix C.

¹⁰ Press Release, *Department of Justice, 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/departments-justice-announces-initiative-terminate-legacy-antitrust-judgments>.

¹¹ *Judgment Termination Initiative*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/atr/JudgmentTermination>; *Judgment Termination Initiative: Tennessee, Eastern District*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/atr/judgment-termination-initiative-tennessee-eastern-district> (last updated Oct. 2, 2018).

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/s/

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