

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

TULSA BOTTLERS ASSOCIATION, ET  
AL.,

Defendants.

Civil Action No. 72-cv-230-aeb

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

The United States respectfully submits this memorandum in support of its motion to terminate a legacy antitrust judgment. The Court entered the judgment in the *Tulsa Bottlers Association* in 1972, over forty-five years ago. After examining this judgment—and after soliciting public comment on its proposed termination, and receiving no comments, the United States has concluded that termination of this judgment is appropriate. The anticompetitive conduct that the decree enjoined has long since ended. Termination will permit the Court to clear its docket, and the Department to clear its records, 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.<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, like the judgment at issue here, 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 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 are no longer necessary to protect competition.

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.<sup>2</sup> In

---

<sup>1</sup> The primary antitrust law at issue in this motion is the Sherman Act, 15 U.S.C. §§ 1-7.

<sup>2</sup> Department of Justice’s Initiative to Seek Termination of Legacy Antitrust Jud Fed. Reg. 19,837 (May 4, 2018), <https://www.gpo.gov/fdsys/granule/FR-2018-05-04/2018-09461>.

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.<sup>3</sup> The United States believes that its outstanding perpetual antitrust judgments presumptively should be terminated; nevertheless, the Antitrust Division examined the *Tulsa Bottlers Association* judgment 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 the *Tulsa Bottlers Association* judgment.

In brief, the process by which the United States has identified judgments it believes should be terminated 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 moves to terminate it.

The United States followed this process for the *Tulsa Bottlers Association* judgment.<sup>4</sup>

The remainder of this motion is organized as follows: Section II describes the Court's

---

<sup>3</sup> <https://www.justice.gov/atr/JudgmentTermination>.

<sup>4</sup> The United States followed this process to move several dozen other district courts to terminate legacy antitrust judgments. See, e.g., *United States v. Union Pacific Railroad*, Case No. 2:19-mc-00219-DAK (D. Utah Apr. 3, 2019) (terminating five judgments); *United States v. Trans-Missouri Freight Assoc.*, Case No. 6:19-mc-00104-JAR (D. Kan. Apr. 24, 2019) (terminating four judgments); *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).

jurisdiction to terminate the judgment and the applicable legal standards for terminating the judgment. Section III explains that perpetual judgments rarely serve to protect competition and that those that are more than ten years old presumptively should be terminated. Section III also presents factual support for termination of the *Tulsa Bottlers Association* judgment. Section IV concludes. Appendix A attaches a copy of the *Tulsa Bottlers Association* judgment. Finally, Appendix B is a proposed order terminating the final judgment.

## II. APPLICABLE LEGAL STANDARDS FOR TERMINATING THE JUDGMENT

This Court has jurisdiction and authority to terminate the *Tulsa Bottlers Association* judgment. 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 the 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); *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. . .”) (citations and quotations omitted). Thus, the Court may terminate the judgment for any reason that justifies relief, including that the judgment no longer serves its original purpose of protecting competition.<sup>5</sup>

---

<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 *Tulsa Bottlers Association* 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.

Termination of this judgment is warranted.

### **III. ARGUMENT**

It is appropriate to terminate the perpetual judgment in the *Tulsa Bottlers Association* case because it no longer serves its original purpose of protecting competition. The United States believes that the judgment presumptively should be terminated because its age alone suggests it no longer protects competition. Other reasons, however, also weigh in favor of termination. 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 generally including in each judgment a term automatically terminating the judgment after no more than ten years.<sup>6</sup> The *Tulsa Bottlers Association* judgment—which is 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 Judgment Should Be Terminated Because it is Unnecessary**

In addition to age, other reasons weigh heavily in favor of terminating this judgment.

---

<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>.

The Court entered the *Tulsa Bottlers Association* judgment in 1972, retaining jurisdiction in Section XI of the judgment. The decree enjoined defendants from various activities illegal under the antitrust laws, including fixing soft drink prices and exchanging confidential business information. The decree also dissolved the Tulsa Bottlers Association, the main conduit for all of the defendants' illegal activity. The time periods set forth in the decree in Sections VI, VII, VIII, and IX all lapsed decades ago. In sum, the Court should terminate this judgment because of its age, and also because the terms largely prohibit acts the antitrust laws already prohibit (price fixing), judgment terms have been satisfied decades ago, and the primary conduit for the illegal activity no longer exists.

**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 *Tulsa Bottlers Association* judgment. 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.<sup>7</sup> On August 24, 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 the case, linked to the judgment, and invited public comment. No comments were received with respect to this judgment.

---

<sup>7</sup> Press Release, Department of Justice, Department of Justice Announces Initiative to Terminate “Legacy” Antitrust Judgments, (April 25, 2018), <https://www.justice.gov/opa/pr/departement-justice-announces-initiative-terminate-legacy-antitrust-judgments>.

<sup>8</sup> *Judgment Termination Initiative, Oklahoma, Northern District*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/atr/judgment-termination-initiative-oklahoma-northern-district>.

#### IV. CONCLUSION

For the foregoing reasons, the United States believes termination of the *Tulsa Bottlers Association* judgment is appropriate, and respectfully requests that the Court enter an order terminating it. *See* Appendix B, which is a proposed order terminating the judgment.

Respectfully submitted,

Dated: June 5, 2019

/s/

---

Mark A. Merva  
Antitrust Division  
United States Department of Justice  
450 Fifth Street, NW  
Washington, DC 20530  
Phone: (202) 616-1398  
Email: [mark.merva@usdoj.gov](mailto:mark.merva@usdoj.gov)