

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Bendix Home Appliances, Inc. and Telecoin Corporation., U.S. District Court, S.D. New York, 1948-1949 Trade Cases ¶62,346, 459 F. Supp. 1290, (Dec. 17, 1948)

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United States v. Bendix Home Appliances, Inc. and Telecoin Corporation.

1948-1949 Trade Cases ¶62,346. U.S. District Court, S.D. New York. Civil Action No. 39-247. December 17, 1948. 459 FSupp 1290

Sherman Antitrust Act, Clayton Antitrust Act

Consent Judgment—Restrictive Distribution System—Practices Enjoined.—A consent judgment entered against a manufacturer of automatic washing machines and a distributor of those washing machines for rental purposes terminates certain restrictive distribution arrangements between the manufacturer, its distributors and dealers. The defendants are ordered to cancel agreements under which the defendant distributor is required to buy all of its automatic washing machines from the defendant manufacturer, and under which the manufacturer is prohibited from selling washing machines for rental purposes to any one other than the defendant distributor. Arrangements by which a distributor of the manufacturer's products is confined to a designated territory and is prohibited from reselling or servicing machines outside the designated territory are ordered terminated. The defendant distributor is prohibited from limiting the number of rental machines any operator may purchase or lease and from controlling the location at which any such machine may be installed.

For plaintiff: Herbert A. Bergson, Assistant Attorney General; John F. X. McGohey, United States Attorney; Sigmund Timberg, Manuel M. Gorman, J. Francis Hayden, Irving B. Glickfeld, Special Assistants to the Attorney General.

For defendants: Goldwater & Flynn; Hawkins, Delafield & Wood.

Final Judgment

The plaintiff, United States of America, having filed its complaint herein on December 13, 1946, both of the defendants having appeared and severally filed their answers to such complaint, denying the substantive allegations thereof, all parties hereto, by their respective attorneys herein, having severally consented to the entry of this final judgment, without trial or adjudication of any issue of fact or law herein, and without admission by any party in respect to any such issue:

NOW, THEREFORE, without any testimony or evidence having been taken herein, and without trial or adjudication of any issue of fact or law herein and upon the consent of the parties hereto, the court being advised and having considered the matter;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

[*Jurisdiction*]

I

This court has jurisdiction of the subject matter of this action and of the parties hereto; the complaint states a cause of action against the defendants under Sections 1 and 2 of the Act of Congress dated July 2, 1890, as amended, commonly known as the Sherman Act, and under Section 3 of the Act of Congress of October 15, 1914, as amended, commonly known as the Clayton Act.

[*Terms Defined*]

II

When used in this final judgment, the following terms have the meanings assigned respectively to them below:

- (A) "Bendix" means defendant, BEN DIX HOME APPLIANCES, INC., a corporation organized and existing under the laws of the State of Delaware, with offices and principal place of business at South Bend, Indiana.
- (B) "Telecoin" means defendant, TELECOIN CORPORATION, a corporation organized and existing under the laws of the State of Delaware, with offices and principal place of business in New York City, New York.
- (C) "Machine", means an automatic washing machine which washes, rinses and damp dries clothes automatically, and any parts thereof.
- (D) "Bendix Laundry" means a machine sold under the name of defendant Bendix.
- (E) "Rental Machine" means a machine used for commercial purposes, or other wise than in ordinary home use. Rental machines are used in the following ways, among others: by multiple patrons in apartment, store, or public laundry locations, or in hospitals, industrial plants, and in similar institutions.
- (F) "Person" means any individual, firm or corporation.
- (G) "Distributor" means a person who purchases machines from Bendix for resale.
- (H) "Dealer" means a person who purchases Bendix laundries from distributors for resale,
- (I) "Operator" means a person engaged in the business of renting rental machines. Operators usually install their rental machines in apartment, store or public laundry locations.

[*Applicability of Provisions*]

III

The provisions of this judgment applicable to any defendant shall apply to its subsidiaries, successors and assigns, and to each of their officers, directors, agents, nominees, or employees, and to any other person acting under, through, or for such defendant.

[*Agreements Ordered Terminated*]

IV

Defendant Bendix be, and it hereby is, directed to terminate and cancel all contracts, understandings and agreements concerning machines with its distributors whereby, and is enjoined and restrained from entering into, maintaining, enforcing or adhering to any contract, understanding or agreement concerning machines by which, any distributor is excluded from any designated territory; or by which any distributor is required, induced or agrees:

- A. Not to resell, service, or repair Ben dix Laundries outside of any designated territory; or
- B. To pay a penalty or become subject to any discrimination because of sales, rentals or services made or performed by the distributor outside of any designated territory; or
- C. To use or sell for use in the repair or servicing of Bendix Laundries only parts manufactured by or approved by Bendix; or
- D. To resell machines only to or through dealers approved or suggested by Bendix.
- E. Not to sell machines for use as rental machines other than to or through Telecoin, or through any other person designated by Bendix; or
- F. To sell identical parts to any opera tor at higher or lower prices than to any other operator; or
- G. To sell Bendix Laundries at prices fixed by Bendix or at not less than mini mum prices stipulated by Bendix.

[*Future Practices Enjoined*]

V

Defendant Bendix be, and it hereby is, directed to advise distributors to terminate and cancel all contracts, understandings and agreements whereby, and is enjoined and restrained from entering into, maintaining, enforcing, adhering to, requiring or suggesting any future practice, contract, understanding or agreement by which, any dealer is required, induced or agrees:

- A. Not to resell, service or repair machines outside of any designated territory; or
- B. To pay a penalty or become subject to any discrimination because of sales, rentals or services made by the dealer out side of any designated territory; or
- C. Not to sell machines for use as rental machines; or
- D. To use or sell for use in the repair or servicing of Bendix Laundries only parts manufactured or approved by Bendix; or
- E. To sell Bendix Laundries at prices fixed by Bendix or at not less than mini mum prices stipulated by Bendix.

[*Agreements Ordered Terminated*]

VI

Defendants Bendix and Telecoin be, and they hereby are, directed to terminate, and cancel any contracts, understandings and agreements between them whereby, and are enjoined and restrained from entering into, maintaining, enforcing or adhering, to any contract, understanding or agreement by which:

- A. Telecoin has or acquires the sole and exclusive right to buy rental machines, provided that this provision does not apply to or affect, or determine the legality or illegality of, the contract entered into between defendant Bendix and defendant Telecoin on April 14, 1948; or
- B. Bendix induces or causes its distributors to sell 'machines exclusively to Tele coin for use as rental machines; or
- C. Telecoin uses only Bendix Laun dries; or
- D. Telecoin submits to Bendix agreements it executes with operators.

VII

A. Defendant Telecoin be, and it hereby is, directed to terminate and cancel all contracts, understandings and agreements with operators whereby, and is enjoined and restrained from entering into, maintaining, enforcing by litigation or otherwise or adhering to any contract, understanding or agreement by which:

- 1. Telecoin limits or restricts the number of rental machines any operator may purchase, lease or operate; or
- 2. Telecoin limits or restricts the location at which any operator may install or operate rental machines; or
- 3. Any operator is required, induced or agrees not to resell or remove rental machines; or
- 4. Any operator is required, induced or agrees to purchase soap, laundry bags and other materials and accessories to be used in connection with the operation of the rental machines exclusively or preponderantly from Telecoin, or from any source or sources designated by Telecoin; or
- 5. Telecom agrees not to sell or lease or refuse to sell or lease rental machines to any person because such machines are to be installed or used in any existing operator's territory; or

6. Any operator is required, induced or agrees to obtain Telecom's approval in connection with the installation or use of rental machines; or
7. Any operator is required, induced or agrees to buy, sell or use only parts manufactured or approved by Bendix; or
8. Any operator is required, induced or agrees to purchase parts only from a distributor or other, source designated by Bendix or Telecoin.; or
9. Any operator is required, induced or agrees to buy parts at prices fixed by Bendix or Telecoin; or
10. Any operator is required, induced or agrees to charge rental fees for the use of, rental machines in accordance with terms and conditions fixed or determined by Bendix or Telecoin.

B. Defendant Telecoin be, and it hereby is, enjoined and restrained from selling or leasing rental machines in any manner unless it sells or leases them to all bona fide operator applicants and without any discrimination, whatsoever.

C. Defendant Telecoin be, and it hereby is, enjoined and restrained from selling or leasing rental machines upon any condition whatsoever other than payment of purchase price on a sale or rental fee on a lease.

VIII

Nothing in this judgment shall prevent defendants Bendix and Telecoin from availing themselves of the benefits, if any, of the Act of Congress of 1937, commonly called the Miller-Tydings proviso to Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies."

[*Copies of Judgment*]

IX

Defendant Bendix be, and it hereby is, directed to cause copies of this final judgment to be mailed, postage prepaid, within fifteen (15) days from the effective date of this judgment, to each of its distributors, and to dealers through its distributors.

X

Defendant Telecoin be, and it hereby is, directed to cause copies of this final judgment to be mailed, postage prepaid, within fifteen (15) days from the effective date of this judgment to each of its operators.

[*Inspection Authorised*]

XI

For the purpose of securing compliance with this judgment, and for no other purpose, duly authorized representatives of the Department of Justice, upon the written request of the Attorney General or Assistant Attorney General, and on reasonable notice to the defendants made to their principal offices, shall be permitted: (a) access, during the office hours of said defendants, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession of or under the control of said defendants relating to any of the matters contained in this judgment, such access to be subject to any legally recognized privilege; and (b) subject to the reasonable convenience of said defendants and without restraint or interference from them, to interview officers or employees of defendants, who may have counsel present, regarding any such matters.

For the purpose of securing compliance with this judgment any defendant upon the written request of the Attorney General, or an Assistant Attorney General, and upon reasonable notice to its principal office, shall submit such written reports with respect to any of the matters contained in this judgment as from time to time may be necessary for the purpose of enforcement of this judgment. No information obtained by the means

provided in this paragraph shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings to which the United States is a party, for the purpose of securing compliance with this judgment, or as otherwise required by law.

[*Jurisdiction Retained*]

XII

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