UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

IN RE: TERMINATION OF LEGACY ANTITRUST JUDGMENTS IN THE NORTHERN DISTRICT OF IOWA	No. 19-mc-04-MAR

Consolidating:

UNITED STATES OF AMERICA, Plaintiff, v. STAMPS-CONHAIM-WHITEHEAD, INC., Defendant	Civil Action No. 1338

UNITED STATES OF AMERICA, Plaintiff, v. METRO ASSOCIATED SERVICES, INC., Defendant	Civil Action No. 1337

UNITED STATES OF AMERICA, Plaintiff, v. IOWA BEEF PACKERS, INC., Defendant.	Civil No. 69-C-3008-W

MEMORANDUM OF LAW 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 the judgments in the above-captioned cases between 1963 and 1970, between forty-nine and fifty-six years ago. After examining each judgment—and after soliciting public comment on each proposed termination, and receiving no comments—the United States has concluded that termination of these judgments is appropriate. 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.[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

[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 concern violations of these laws.

years in nearly all of its antitrust judgments. Perpetual judgments entered before the policy change, like the three 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 corporate 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 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 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.

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

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 moves to terminate it.

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 and the applicable legal standard. 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 each judgment. 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 the final judgments.

4 The United States followed this process to move several dozen other district courts to terminate legacy antitrust judgments. *See, e.g., United States v. Ed Phillips & Sons Co., et al.*, Case 8:73-cv-00144-LSC-SMB (D. Neb. Apr. 26, 2019) (terminating four judgments); *In re: Termination of Legacy Antitrust Judgments in the Southern District of Iowa*, Case 4:19-mc-00012-JAJ (Apr. 8, 2019) (terminating two judgments); *United States v. Armco Drainage & Metal Products, Inc.*, Case No. 3804 (D. N.D. Apr. 9, 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).

II. APPLICABLE LEGAL STANDARDS FOR TERMINATING THE JUDGMENTS

This Court has jurisdiction and authority to terminate the judgments in the above-captioned cases. A copy of each judgment is included in Appendix A. In each case, the judgment 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 McDonald v. Armontrout*, 908 F.2d 388, 390 (8th Cir. 1990) ("The district court retains authority over a consent decree, including the power to modify the decree in light of changed circumstances, and is subject to only a limited check by the reviewing court"); *see also Smith v. Bd. of Educ. of Palestine-Wheatley Sch. Dist.*, 769 F.3d 566, 572 (8th Cir. 2014) *(*"federal courts of equity [have] substantial flexibility to adapt their decrees to changes in the facts or law").

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 three judgments is warranted.

[5] In light of the circumstances surrounding the three 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). These three 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 many 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.

III. ARGUMENT

It is appropriate to terminate the perpetual judgments in each of the three 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. 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 with the passage of decades 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.[6] The three judgments in the above-captioned matters— all of which are several 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.

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

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.

1. All Terms of Judgment Have Lapsed or Have Been Satisfied

With respect to the *Iowa Beef Packers* case, the Antitrust Division filed suit in February 1969 to block a merger between the Iowa Beef Packers and Blue Ribbon Beef Pack. On March 20, 1970, the parties settled the lawsuit and this Court entered the final judgment. The judgment required (1) that Iowa Beef Packers to sell certain assets of Blue Ribbon within two years; and (2) enjoined Iowa Beef Packers for ten years from acquiring assets of any business of slaughtering cattle in certain states without first obtaining the approval of this Court.

On February 27, 1974, this Court modified the final judgment to appoint a divestiture trustee. On January 9, 1976, this Court modified the judgment to change the definition of the term "eligible purchaser." Both of these modifications are set forth in Appendix A. Ultimately, the divestiture occurred.

On May 10, 1977, this Court substantively modified the judgment (*see* Appendix A). This Court allowed the Iowa Beef Packers to reacquire a previously divested beef slaughtering plant with two conditions: (1) defendant had to raze the plant; and (2) defendant agreed not to build another beef slaughtering plant on the vacant land for five years. Defendant complied with both of these modifications.

Because the required divestitures took place decades ago, and because all other substantive terms of the judgment and modifications have lapsed or have been satisfied, this judgment should be terminated.

2. The Defendant No Longer Exists

With respect to the *Stamps-Conhaim-Whitehead* case, the defendant—Stamps-Conhaim-Whitehead, Inc. —no longer exists. Therefore, the judgment in this matter serves no purpose and should be terminated.

3. Market Conditions Have Changed

The *Stamps-Conhaim-Whitehead* and *Metro Associated Services* cases both involved newspaper advertising mat services. During the 1960s, some daily newspapers (typically smaller, local newspapers) used these services to assist local businesses in putting together copy for newspaper advertising campaigns. In the last fifty years, new technologies and modes of printing newspapers have developed and are in widespread use throughout the newspaper industry. These new technologies do not require advertising mat. In short, because the development of new products has eliminated the markets at issue in these decrees, the judgments are irrelevant and should be terminated.

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 these three judgments. On April 25, 2018, the Antitrust Division issued a press release announcing its efforts to review and terminate legacy antitrust judgments.[7] On June 1, 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.[8] The notice identified each

[7] 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.

[8] *Judgment Termination Initiative*, U.S. DEP'T OF JUSTICE https://www.justice.gov/atr/judgment-termination-initiative-iowa-northern-district (last updated October 2, 2018).

case, linked to the judgment, and invited public comment. No public comments were received with respect to these three judgments.

IV. CONCLUSION

For the foregoing reasons, the United States believes termination of the judgments in each of the three above-captioned cases is appropriate, and respectfully requests that the Court enter an order terminating them. A proposed order terminating the judgments is attached as Appendix C.

Respectfully submitted,

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